

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MONTEREY BAY MILITARY HOUSING, : Docket #19-CV-9193  
LLC, et al., :  
Plaintiffs, :  
-against- :  
AMBAC ASSURANCE CORP. et al., :  
Defendants. : New York, New York  
: December 19, 2022  
-----: CONFERENCE

PROCEEDINGS BEFORE  
THE HONORABLE SARAH L. CAVE  
UNITED STATES MAGISTRATE JUDGE

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APPEARANCES (Continued)

For (Unknown) : (First Name Unknown) Bannon

INDEX

E X A M I N A T I O N S

<u>Witness</u>	Re-	Re-		
	<u>Direct</u>	<u>Cross</u>	<u>Direct</u>	<u>Cross</u>
None				

E X H I B I T S

<u>Exhibit</u>	<u>Voir</u>		
<u>Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>
None			

PROCEEDINGS

1                   THE DEPUTY CLERK: Your Honor, this is in  
2 the matter of Monterey Bay Military Housing, LLC, et  
3 al., versus AMBAC Assurance Corporation, et al., 19  
4 Civ. 9193.

5                   Counsel, please state your appearance for  
6 the record.

7                   MS. TABAKSBLAT: Good afternoon. Lauren  
8 Tabaksblat from Brown Rudnick on behalf of  
9 plaintiffs. And with me today are my colleagues,  
10 Meghan McCafferty and Richard Darst.

11                  THE COURT: Okay. Good afternoon.

12                  Okay. For AMBAC?

13                  MR. JONES: Good afternoon, Your Honor.  
14 Taylor Jones from Quinn Emanuel for Defendant, AMBAC  
15 Assurance Corporation. And I'm joined by my  
16 colleagues, Rachel Epstein, Jeremy Baldoni and  
17 Tenisha Williams.

18                  THE COURT: Okay. Good afternoon.

19                  And, Ms. Williams, your order hasn't been  
20 docketed yet, but we have signed it, so you're fine.

21                  Okay. Jefferies? Is there --

22                  MR. BALBER: Good afternoon, Your Honor.

23                  Scott Balber from Herbert Smith Freehills.  
24 And with me are my colleagues, John O'Donnell,  
25 Barron Flood and Michael Jones.

PROCEEDINGS

1                   THE COURT: Okay. Good afternoon.

2                   For Mr. Ray?

3                   MR. AHMED: Good afternoon, Your Honor.

4                   Amer Ahmed for Dan Ray from Gibson Dunn &  
5 Crutcher. With me are my colleagues, Hannah  
6 Kirshner, Reed Brodsky and Cullinan Williams.

7                   THE COURT: Okay. Good afternoon. I'll  
8 add Williams to the list of popular names in this  
9 case.

10                  Okay. Mr. Marfatia?

11                  MR. MULDREW: Good afternoon, Your Honor.

12                  Brian Muldrew, Katten Muchin Rosenman, on  
13 behalf of Defendant Chetan Marfatia.

14                  THE COURT: Okay. Good afternoon.

15                  For Malvern? Do we have someone for  
16 Malvern? Okay.

17                  And Mr. Bannon? Okay.

18                  MR. BANNON: Your Honor, (inaudible).

19                  THE COURT: Okay. Great. Okay. Lucky  
20 you.

21                  I'm going to start with you first because  
22 we -- I'm hoping to get you out of here so you don't  
23 have to be subjected to everything that we're going  
24 to talk about today.

25                  So I guess we'll start with AMBAC.

PROCEEDINGS

1       Mr. Jones, I don't know who is going to take the  
2       lead on your side, but, obviously, we have  
3       Mr. Bannon's letter that seems to maybe resolve some  
4       of the issues, but where do things stand?

5            MR. JONES: Yeah, I would agree with that,  
6       Your Honor. Several of the issues are resolved  
7       based on Mr. Bannon's letter. There still are a few  
8       open issues, though --

9            THE COURT: Okay.

10          MR. JONES: -- certainly with respect to  
11       documents. We're still waiting on the Army to  
12       produce Barry Scribner's (phonetic) documents or to  
13       let us know if those documents have been lost.

14          THE COURT: Okay.

15          MR. JONES: We just learned for the first  
16       time in Mr. Bannon's letter last week, that the  
17       military never instituted a litigation hold.

18            We, obviously, disagree with that decision,  
19       and we are considering a potential motion for  
20       sanctions based on a failure to preserve documents,  
21       but we, obviously, need more information about that.

22            Basically, we would like to know when the  
23       Army will have an answer on Mr. Scribner's  
24       documents.

25          THE COURT: Okay.

PROCEEDINGS

1                   MR. JONES: We'd like a commitment from  
2 them on when they'll be produced.

3                   Turning to the Air Force, we're also  
4 waiting for documents in response to our two-year  
5 request from the Air Force. We understand that  
6 there were e-mail issues that, you know, caused  
7 that --

8                   THE COURT: Yeah.

9                   MR. JONES: -- request to have possibly  
10 been overlooked, but we can't wait another three  
11 months to get those documents.

12                  THE COURT: Right. Okay.

13                  MR. JONES: As far as General Daley  
14 (phonetic) goes, you know, we understand that the  
15 Army is potentially willing to offer 30(b)(6)  
16 testimony instead of --

17                  THE COURT: Okay.

18                  MR. JONES: -- you know, offering  
19 Mr. Daley -- or General Daley as a witness.

20                  We're open to potentially considering that,  
21 as long as the Army is willing to offer 30(b)(6)  
22 testimony on the topics for which we wanted General  
23 Daley's testimony. And that includes the  
24 unclean-hands issues and his work investigating  
25 housing conditions as part of Army Material Command.

PROCEEDINGS

1                   THE COURT: Okay. And have you served  
2 those topics on the Army, or do those have --

3                   MR. JONES: We have not served 30(b) (6)  
4 topics yet.

5                   THE COURT: Okay.

6                   MR. JONES: We received the invitation to  
7 serve a 30(b) (6) --

8                   THE COURT: Okay.

9                   MR. JONES: -- notice last week, and we're  
10 considering that offer now.

11                  THE COURT: Okay. All right.

12                  I would strongly encourage you to consider  
13 that carefully. I -- it's pretty unlikely that I  
14 would be compelling General Daley to appear for a  
15 deposition based on what's been said to me so far.  
16 You know, that's not a ripe issue, but just based on  
17 what's been presented, I don't think that this is a  
18 case that should be garnering his attention unless  
19 there's something, like, more specific like we've  
20 addressed with some of the other witnesses in this  
21 case. So hopefully the parties can work that out.

22                  So I'll give Mr. Bannon a chance to  
23 respond, I guess, specifically on the Scribner  
24 documents, the Air Force documents and, I guess, the  
25 timing on receiving both of those.

## PROCEEDINGS

1 MR. BANNON: Sure, Your Honor.

2 With respect to the Scribner documents, the  
3 Army is currently looking into two more domains that  
4 were used --

5 THE COURT: Okay.

6 MR. BANNON: -- while working with the  
7 Pentagon. I expect the search to be done shortly.

8 THE COURT: Okay.

9 MR. BANNON: And in short time we will know  
10 whether there are additional documents that are  
11 being produced or not --

12 THE COURT: Okay.

13 MR. BANNON: -- I expect to have an answer  
14 by the end of this week --

15 THE COURT: Okay.

16 MR. BANNON: -- on this issue.

17 THE COURT: Great.

18 MR. BANNON: With respect to the Air Force  
19 documents, the Air Force is seeing this request for  
20 the first time this week.

21 THE COURT: Okay.

22 MR. BANNON: (Inaudible) request. I have  
23 talked to them about it. They do not have a  
24 production timeline with respect to that yet. It's  
25 going to take them some time to get a bearing on how

## PROCEEDINGS

1 many documents they may have that are responsive to  
2 it.

3 THE COURT: Okay.

4 MR. BANNON: But I can update you as well  
5 at the end of this week when we have an idea on the  
6 other issues, if that will be helpful.

7 THE COURT: Okay.

8 MR. BANNON: And with respect to General  
9 Daley, we would be happy to the review the 30(b)(6)  
10 request when it comes in (inaudible).

11 THE COURT: Okay. I appreciate that.

12 Mr. Jones, in terms of the documents from  
13 the Air Force, it could potentially be a lot, or is  
14 it possible for you to focus specifically -- instead  
15 of just relying on the whole request, are there  
16 particular categories that are most important that  
17 would help Mr. Bannon prioritize his contact's  
18 efforts?

19 MR. JONES: I think we could potentially  
20 hone in on some specific topics.

21 THE COURT: Okay.

22 MR. JONES: Certainly related to the Air  
23 Force's approval of lender-selection decisions, any  
24 other major decisions, you know, possibly some other  
25 categories of documents. I think what might make

## PROCEEDINGS

1 sense --

2 THE COURT: Okay.

3 MR. JONES: -- is for us to follow up with  
4 him in writing and highlight some particular  
5 requests that are higher priority than others.

6 THE COURT: Okay. I assume that would be  
7 helpful, Mr. Bannon?

8 MR. BANNON: Very helpful.

9 THE COURT: Okay. Great.

10 Okay, so I'll rely on you, Mr. Jones, to  
11 follow up with Mr. Bannon about that.

12 And then if -- Mr. Bannon, if you could  
13 give us something on the docket by the end of the  
14 week just letting us know the status of the Army  
15 productions and the Air Force searches.

16 MR. BANNON: No problem.

17 THE COURT: Okay. Okay. Good. All right.

18 If you don't want to stay, not to -- not --  
19 no offense, but you're welcome to leave. Okay.

20 Thank you very much, Mr. Bannon.

21 So then I had thought we -- that we would  
22 cover the Malvern issue next because I was hoping to  
23 let them go, but since there's nobody here from  
24 Malvern, I'll just lump that in with everything else  
25 that we're going to talk about.

## PROCEEDINGS

1                   So, Ms. Tabaksblat, why don't we start with  
2 the issues that you've raised in your letter, and  
3 let me know what's still open.

4                   MS. TABAKSBLAT: Your Honor, the first  
5 issue we raised, which I think should be pretty  
6 simple, is scheduling a date for Mr. Handler's  
7 deposition. We have reached out to Jefferies. We  
8 haven't received any proposed dates. And we'd like  
9 the Court to order them to provide proposed dates by  
10 the end of the week.

11                  THE COURT: Okay. All right.

12                  Mr. Balber?

13                  MR. BALBER: Thank you, Your Honor.

14                  First of all, I -- the way it was  
15 characterized in Ms. Tabaksblat's letter was that  
16 Jefferies refused to provide a date for Mr. Handler.  
17 That's just flatly false. They asked us for a date  
18 last Wednesday --

19                  THE COURT: Okay.

20                  MR. BALBER: -- along with a series of  
21 other depositions. We understand your order. We're  
22 going to comply with it.

23                  At the last conference, your Honor noted  
24 that -- I'm not going to quote you back to you, but  
25 you said at the end, after the rest of our witnesses

## PROCEEDINGS

1 were deposed --

2 THE COURT: Okay.

3 MR. BALBER: -- there are 35 witnesses in  
4 total who have not been scheduled yet. I don't know  
5 why Mr. Handler needs to have his deposition  
6 scheduled by the end of this week when plaintiffs  
7 have countless depositions they've been unable to  
8 schedule of their people, numerous cancellations.  
9 We will get them a date before the end of discovery  
10 deadline. I can't get a date this week. And,  
11 again, I'm not sure why Mr. Handler is so special  
12 that his deposition needs to be scheduled before 35  
13 other witnesses whose notices have been out there  
14 for months.

15 THE COURT: Okay. Ms. Tabaksblat?

16 I mean, I've ordered that he be deposed, so  
17 it -- I'm not going to let Mr. Balber out of that,  
18 so you have my word on that.

19 MR. BALBER: And I'm not trying to get out  
20 of it.

21 THE COURT: No, I know. I know. I know.

22 MS. TABAKSBLAT: Your Honor, so with  
23 respect to this concept that there's 35  
24 un-deposed -- unscheduled dates, obviously, we're  
25 prioritizing the witnesses that we think are most

## PROCEEDINGS

1 important so we don't need to take duplicate  
2 depositions if we don't need to take 35.

3 THE COURT: Right.

4 MS. TABAKSBLAT: I don't understand why we  
5 can't get a date. It could happen at the end of the  
6 discovery period. But it -- you know, just for  
7 scheduling purposes, this is a deposition that's a  
8 priority for us. So if we could get that scheduled  
9 sometime in the near future, I think it's important  
10 to us to have that on the schedule.

11 THE COURT: I understand, but it also sort  
12 of flips exactly what Mr. Balber reminded me that I  
13 said about Mr. Handler was -- he was sort of the  
14 clean-up person on, you know, the issues that we had  
15 talked about at the last conference.

16 So I -- I'm not going to order that  
17 Jefferies provide you a date by the end of the week  
18 because it's going to get worked out. I've ordered  
19 that it's going to happen. It's not going to not  
20 happen because I've held it in place. So I  
21 understand that it's a priority for you, but -- I  
22 don't know who the other 35 are, but it will happen;  
23 okay?

24 MS. TABAKSBLAT: Understood. Thank you,  
25 Your Honor. We will hold that in abeyance, and if

## PROCEEDINGS

1 we need to --

2 THE COURT: Okay.

3 MS. TABAKSBLAT: -- (inaudible).

4 THE COURT: Okay. 30(b)(6) topics?

5 MS. TABAKSBLAT: Oh, my colleague,  
6 Ms. McCafferty is going to address that.

7 THE COURT: Okay. Go ahead. Thank you.

8 MS. McAFFERTY: Good afternoon, Your Honor.

9 With respect to the 30(b)(6) topics that  
10 the plaintiffs have issued to the Jefferies  
11 entities, we have been going back and forth with  
12 them over the past, you know, seven or eight months  
13 with respect to -- we served initial deposition  
14 topics in April, and we have revised those two  
15 times, sent two -- sent two additional notices. And  
16 we were able to meet and confer with the Jefferies  
17 entities last Thursday, and we discussed the  
18 majority of their objections. And we were able to  
19 reach agreement, I believe, on approximately four  
20 topics and --

21 THE COURT: Okay.

22 MS. McAFFERTY: -- there are four still  
23 under consideration, and we're working those ones  
24 out.

25 THE COURT: Okay.

## PROCEEDINGS

1 MS. McAFFERTY: But with respect to their  
2 main objections, there are two main categories. The  
3 first is that they have argued that our topics are  
4 vague and overbroad. And we would like to point out  
5 that each iteration that we've served upon them,  
6 we've attempted to limit that vagueness, add  
7 additional specificity, make the topics more  
8 particularized in order to facilitate this process  
9 and move forward.

10 Additionally, we do not find that the  
11 topics in our second amended notice are overbroad.  
12 They go to the specific projects and specific  
13 knowledge that Jefferies would have.

14 Their second objection deals with a general  
15 objection to Jefferies' knowledge about GMAC or  
16 Capmark's financings. However, we find that to be  
17 incredibly relevant because in order to -- the  
18 successor liability for Jefferies is predicated upon  
19 their knowledge at the time in which that they  
20 purchased these assets through the 363 sale.

21 And so all of our topics are narrowly  
22 tailored to target Jefferies' knowledge of what GMAC  
23 and Capmark were doing through these financings. So  
24 we do not find that, you know, they need to have  
25 personal knowledge about the exact GMAC and Capmark

## PROCEEDINGS

1 findings at issue, but we are entitled to discover  
2 what their knowledge was at the time --

3 THE COURT: Okay.

4 MS. McAFFERTY: -- so that we can ascertain  
5 what their successor liability would be.

6 THE COURT: Okay. Does anybody have a copy  
7 of the four that are in dispute that they can hand  
8 up to me?

9 MR. BALBER: There aren't four in dispute.

10 THE COURT: Okay.

11 MR. BALBER: There are dozens in dispute.

12 THE COURT: Okay.

13 MR. BALBER: So -- but I --

14 THE COURT: Regardless, does anybody have  
15 something I can look at that is a list of them. I  
16 don't think I have that. In the pile of things that  
17 I do get today, that was not one of them.

18 Okay. Why don't you go ahead, Mr. Balber,  
19 and if somebody has a copy they can give me, fine;  
20 otherwise, I'll do my best.

21 MR. BALBER: Yeah, I mean, I actually, as  
22 we -- as I thought about today, I was trying to  
23 navigate how you would want to approach this  
24 because --

25 THE COURT: Yeah.

## PROCEEDINGS

1                   MR. BALBER: -- there's a lot here. I'm  
2 not sure us going through each one is going to be  
3 efficient --

4                   THE COURT: No.

5                   MR. BALBER: -- for your purposes.

6                   THE COURT: No.

7                   MR. BALBER: Right. So I -- I mean, I  
8 think that that's a fair assessment of the two  
9 broad-based categories --

10                  THE COURT: Okay.

11                  MR. BALBER: -- of which there are issues.

12                  As to the first, which is overbreadth, I  
13 just want to give you one example, which is their  
14 Topic Number 1. This is where it stands now after  
15 numerous iterations. Jefferies knowledge of and  
16 experience with MHPI projects, including the  
17 debt-solicitation process, loan structuring, debt  
18 financing, industry-standard interest rates,  
19 industry-standard credit spreads, industry-standard  
20 bond sales, industry-standard service fees and  
21 profit margins. That's one topic.

22                  THE COURT: Right.

23                  MR. BALBER: I don't know how I educate a  
24 witness to talk about that from the Jefferies  
25 perspective.

## PROCEEDINGS

1                   THE COURT: Right.

2                   MR. BALBER: There's another request,  
3 Number 3. This is the -- as it currently stands.  
4 Jefferies' communications concerning the Plaintiff  
5 MHPI projects on their financing of such projects,  
6 including, one, internal communications concerning  
7 the Plaintiff MHPI projects. Two, communications  
8 with AMBAC regarding the Plaintiff MHPI projects.  
9 Three, representations to and communications with  
10 Plaintiff MHPI products, the military, the  
11 developers, JLL, and any of their respective  
12 advisors, including their commitments to serve as  
13 financial advisor to provide best value, market  
14 price and open-book pricing. Four -- and I can go  
15 on. This is a single request.

16                   And they're asking us, so we've had this  
17 conversation in numerous meet-and-confers, to look  
18 at the 100,000 documents-plus that we've produced,  
19 communications, and have a witness prepared to talk  
20 about them. I don't know how to approach that.

21                   THE COURT: Well, will the plaintiffs give  
22 Jefferies the documents that they want to ask a  
23 30(b) (6) witness about?

24                   MS. McAFFERTY: Your Honor, with respect to  
25 the topic that he just highlighted, we would like to

## PROCEEDINGS

1 point out that the breadth of these topics mirror  
2 exactly the topics that we've received from the  
3 defendants --

4 THE COURT: Right.

5 MS. TABAKSBLAT: -- that we've committed to  
6 put up. For 18 different plaintiff projects, we've  
7 committed to put up witnesses for, I believe, around  
8 62 topics for each plaintiff.

9 THE COURT: Okay.

10 MS. TABAKSBLAT: So we've taken on the  
11 burden to, you know, respond and prepare witnesses  
12 for similarly worded topics.

13 THE COURT: Right, but, you know, we need  
14 to get at how this witness is going to prepare him  
15 or herself to answer your questions. And one way to  
16 do that is -- if you're talking about internal  
17 communications, then if the witness is shown a  
18 communication, then the witness, you know, can do  
19 his or her best to answer those questions.

20 If the witness gets those in advance, the  
21 witness is going to be that much better prepared for  
22 any other context for the -- you know, for that  
23 particular document.

24 But, you know, I get why the topics are so  
25 broad, but I also get why it's difficult to prepare

## PROCEEDINGS

1 a witness for them.

2 So, again, I don't have the topics. I  
3 mean, if you want me to mark them up, you're not  
4 going to like -- nobody's going to like what I do  
5 with them, so I -- I'm not sure --

6 You know, I assume Jefferies -- Mr. Balber,  
7 you're not opposed to putting up a 30(b)(6) witness  
8 altogether, right?

9 MR. BALBER: No. And, in fact, I think  
10 we've agreed to nine or ten topics out of the 50.

11 THE COURT: Right.

12 MR. BALBER: And that's another universe  
13 that we believe we can reach agreement on.

14 THE COURT: Okay.

15 MR. BALBER: But all communications is  
16 not -- that's not feasible.

17 THE COURT: Okay. But -- and, again -- I'm  
18 sorry, I didn't write down what the two were that  
19 you just read, Mr. Balber, but --

20 MR. BALBER: Well, I read 1 and 3, Your  
21 Honor.

22 THE COURT: But in terms of the  
23 relationship with AMBAC, for example, just as a  
24 General matter, someone will be able to talk about  
25 how Jefferies came to work with AMBAC in the first

## PROCEEDINGS

1 instance and their relationship and what they did  
2 with respect to the MHPI projects in particular,  
3 right?

4 MR. BALBER: That's a simple one because we  
5 had absolutely no dealings with AMBAC.

6 THE COURT: Okay.

7 MR. BALBER: As plaintiffs well know, the  
8 two deals that Jefferies did --

9 THE COURT: Right.

10 MR. BALBER: -- were not credit enhanced by  
11 AMBAC --

12 THE COURT: Okay.

13 MR. BALBER: -- so that's a null set.

14 THE COURT: Okay.

15 MR. BALBER: Yes, I can have somebody  
16 testify to that.

17 THE COURT: Okay. And they -- I was trying  
18 to remember how many. I thought it was only two or  
19 three that Jefferies was involved in, but -- and so,  
20 I guess, to step back, what is it that the  
21 plaintiff -- for the topics that remain in dispute  
22 then, what is it that the plaintiffs categorically  
23 are trying to get from Jefferies that's not already  
24 covered by all the other topics?

25 MS. McAFFERTY: So, Your Honor, many of the

## PROCEEDINGS

1 topics are still in dispute and one of the critical  
2 issues for the plaintiffs is Jefferies' objection to  
3 put up a witness to testify about anything that  
4 relates to the successor-liability issue.

5 In particular, Topic 32 is still objected  
6 to by the Jefferies defendants. And this one is a  
7 critical topic specifically targeted to Jefferies'  
8 purchase of Capmark's MHPI business, including the  
9 decision to acquire the MHPI business, due diligence  
10 of the Capmark business, due diligence of the  
11 Capmark MHPI loan portfolio, the Jefferies new  
12 business approval submission submitted for the  
13 Capmark MHPI business, and any negotiation with Ray  
14 and Capmark regarding the terms of that acquisition.

15 That's an incredibly --

16 THE COURT: Sure.

17 MS. McAFFERTY: -- important topic to  
18 establish success liability, and we still have not  
19 been able to reach an agreement on that topic.

20 THE COURT: Okay.

21 MS. McAFFERTY: And additionally, with  
22 respect to Topic 2, which Mr. Balber highlighted in  
23 our meet-and-confer, we, you know, requested that  
24 the defendants would commit to not object to  
25 documents that would be introduced at the 30(b)(6)

## PROCEEDINGS

1 to the extent that we had not sent them previously.  
2 And we could not reach an agreement on that as well.

3 THE COURT: Okay. I'm sorry. So your  
4 proposal was -- with the documents is what?

5 MS. McAFFERTY: In terms of if we were not  
6 to provide the communications ahead of time --

7 THE COURT: I see.

8 MS. McAFFERTY: -- we wanted to ensure that  
9 there wouldn't be an objection to the document being  
10 presented to the witness. And we couldn't reach  
11 agreement on that as well.

12 THE COURT: Okay. Okay.

13 Mr. Balber, so let's start with the  
14 Capmark. So, surely, someone will testify about how  
15 that transaction came about and the due diligence  
16 that was done. Like, what -- what's the --

17 MR. BALBER: That one, Judge --

18 THE COURT: Okay.

19 MR. BALBER: -- this is Number 32. The  
20 topic as stated is "Jefferies' Purchase of Capmark's  
21 MHPI Business." We did not purchase Capmark's MHPI  
22 business.

23 THE COURT: Okay.

24 MR. BALBER: So that's the issue.

25 THE COURT: Okay.

## PROCEEDINGS

1 MR. BALBER: So if the topic were restated  
2 to be --

3 THE COURT: Okay.

4 MR. BALBER: -- Jefferies' purchase of the  
5 servicing assets from the Bankruptcy Court  
6 proceeding in the 363 sale, no problem.

7 THE COURT: Okay. Can it say that?

8 MS. McAFFERTY: Yes, we can.

9 THE COURT: Okay.

10 MS. McAFFERTY: I'm not a (inaudible).

11 THE COURT: See --

12 MR. BALBER: Well, this -- yeah, you know  
13 what --

14 THE COURT: Christmas miracle.

15 MR. BALBER: If you've got five hours for a  
16 meet-and-confer, we can have you join next time,  
17 Judge.

18 THE COURT: I've done it. I've done it  
19 once --

20 MR. BALBER: Yeah.

21 THE COURT: -- and I barely survived, so --

22 MR. BALBER: Yeah.

23 THE COURT: -- I'm trying to avoid doing it  
24 for you, but I don't have a lot of hope. But in any  
25 event --

## PROCEEDINGS

1 MR. BALBER: That one's easy.

2 THE COURT: All right. Okay.

3 So -- well, just what -- the verbiage that  
4 Mr. Balber used about tailoring it to the servicing  
5 assets bought through the 363 sale, there doesn't  
6 seem to be any dispute about that, so that crosses  
7 one off the list.

8 MS. McAFFERTY: And with respect to the  
9 ongoing disputes, we're willing to make an  
10 additional submission --

11 THE COURT: Okay.

12 MS. McAFFERTY: -- going through the  
13 specific topics at dispute. That would expedite  
14 many things.

15 THE COURT: What I would rather you do is  
16 you try one more time. And -- you know, and then if  
17 there are any that remain in dispute, I'll look at  
18 them. And if I think we need to talk about them,  
19 otherwise, I'll just mark them up so that you can  
20 get this done because, I mean, we're creeping up --  
21 before we know it, we're going to be in January, and  
22 we have a February 15th cut off. And I have a  
23 feeling I know where -- what's coming.

24 But, in any event, I -- I'm going to ask  
25 you both to meet and confer one more time. And if

## PROCEEDINGS

1 it's a definitional issue, that should be easy to  
2 resolve. If it's a -- you know, sort of a  
3 predecessor, you know, precursor question about what  
4 Jefferies' role was, you know, obviously without  
5 prejudice to plaintiffs' objection -- you know to  
6 plaintiffs' objection to how Jefferies is  
7 characterizing itself, fine. But if it gets us to,  
8 actually, the Jefferies' witnesses sitting down for  
9 their 30(b)(6) deposition and getting documents in  
10 front of them, that's what we need to do, is -- it's  
11 not spin our wheels on, you know, how many topics  
12 can we excruciatingly torture each other with.

13 Okay.

14 All right. So meet and confer one more  
15 time, and we'll talk at the end about submissions on  
16 that. Okay.

17 All right. Plaintiffs' 30(b)(6)  
18 objections. So I thought we had dealt with this,  
19 and I had directed, as the plaintiffs quote in their  
20 letter, for the plaintiffs to look at the interest  
21 rates and put them in a spreadsheet.

22 That hasn't happened?

23 MR. BALBER: No, Judge.

24 THE COURT: Okay.

25 MS. McAFFERTY: Your Honor, with respect to

## PROCEEDINGS

1 that, it was our understanding that the order from  
2 the last hearing was to continue to discuss that  
3 topic and how we might be able to provide that  
4 information --

5 THE COURT: Yeah.

6 MS. McAFFERTY: -- to the defendants.

7 THE COURT: Okay, well, quote, "Look up  
8 those interest rates and put them in a spreadsheet."  
9 That's pretty clear to me, but -- I don't  
10 understand. You know, at a minimum, I thought you  
11 were willing to do that. I thought I had your  
12 agreement to do that, so...

13 MS. McAFFERTY: So after the conference, we  
14 received a letter from the Jefferies defendants with  
15 respect to that topic --

16 THE COURT: Okay.

17 MS. McAFFERTY: -- on interest rates, and  
18 they're now seeking additional information with  
19 respect to each of those projects, including the  
20 date of closing --

21 THE COURT: Right.

22 MS. McAFFERTY: -- initial sale of related  
23 securities, coupon rate for securities and yield  
24 rate for securities. And so that, you know, goes  
25 above and beyond just identifying the interest rates

## PROCEEDINGS

1 for the projects.

2 Moreover, it -- it's still the plaintiffs'  
3 position that these financings were entirely  
4 different and are not relevant for the purposes of  
5 assessing the market rate that -- as the plaintiffs  
6 have alleged it.

7 THE COURT: Okay. Well, I already  
8 overruled you on that, and I ordered you to produce  
9 something and you haven't, and you didn't move to  
10 reconsider my ruling on that, so I'm -- for a second  
11 time -- and we'll get to my feeling about motions  
12 for reconsideration in a few minutes. But you need  
13 to produce the spreadsheet.

14 Mr. Balber?

15 MR. BALBER: And we're not asking for any  
16 additional information.

17 THE COURT: Okay. Okay.

18 MR. BALBER: We just want to know the name  
19 of the project, obviously --

20 THE COURT: Yeah.

21 MR. BALBER: -- the date and the interest  
22 rate.

23 THE COURT: Okay. Yep. That -- that's all  
24 I'm asking. Okay.

25 MS. McAFFERTY: Can I just, if I could, ask

## PROCEEDINGS

1 a clarifying question.

2 Is it for the 19 projects that the  
3 defendants have specifically identified?

4 THE COURT: Mr. Balber?

5 MR. BALBER: I'm going to do my quick math.

6 Yeah, I believe there's 19 that we've  
7 identified. I mean, if there are others that we  
8 don't know about, I don't see why those wouldn't be  
9 included in the same universe.

10 THE COURT: Well, I -- let me get you what  
11 I think I can get you, and you're going to have lots  
12 of time in depositions, and I'm sure there's going  
13 to be a lot of follow-up requests after the  
14 depositions.

15 So the -- a spreadsheet of the date, the  
16 project, and the interest rate for the 19 projects.

17 MR. BALBER: I count 18, but --

18 THE COURT: Okay. All right.

19 MR. BALBER: If I was good at math, I  
20 wouldn't --

21 THE COURT: 18 or 19, and you can -- you  
22 guys can work that out. Okay?

23 All right. Thank you.

24 MS. McAFFERTY: Thank you, Your Honor.

25 THE COURT: So I think that's it on the

## PROCEEDINGS

1 plaintiffs' Rule 30 (b) (6) depositions, right?

2 Anything -- anybody else? Okay.

3 And then AMBAC's request for production  
4 from the private litigation; who's going to take  
5 that?

6 MR. JONES: Yes, Your Honor. Mr. Baldoni  
7 will address it.

8 THE COURT: Okay. Go ahead.

9 MR. BALDONI: Thank you, Your Honor. We're  
10 being quite targeted at this point with these  
11 requests.

12 As Your Honor directed, first plaintiffs  
13 produced productions from some regulatory and  
14 government investigations. We assessed those. We  
15 looked at them to see if anything was missing or if  
16 that was enough. And as it turned out -- excuse  
17 me -- upon our careful review, there were some  
18 significant gaps as to particular projects and  
19 plaintiffs and developers -- excuse me -- so we  
20 assessed low-burden ways to fill those gaps. And  
21 civil litigations was a way to do that because  
22 documents have already been produced in certain  
23 civil litigations.

24 We looked for cases where it appears that  
25 productions have already been made, the same issues

## PROCEEDINGS

1 are being litigated in those private litigations as  
2 are being litigated here, and they are projects that  
3 are the gaps where they haven't -- plaintiffs here  
4 haven't produced unclean-hands documents in any  
5 meaningful way.

6 So we honed in on two particular cases, two  
7 particular projects. So that's the D'Antonio  
8 (phonetic) case about Monterey Bay, and Addi  
9 (phonetic) about Fort Meade.

10 Notably, Balfour Beatty is the developer  
11 that pled guilty to defrauding the U.S. government  
12 about a year ago. Balfour Beatty is associated with  
13 eight projects.

14 The two cases that we're talking about here  
15 are not Balfour Beatty projects. They're projects  
16 associated with some of the other developers. And,  
17 you know, we did a --

18 THE COURT: Other developers in this case?

19 MR. BALDONI: Other developers in this  
20 case.

21 THE COURT: Okay.

22 MR. BALDONI: Particularly, Corvus,  
23 Michaels and -- so the Monterey Bay case was started  
24 as Clark and is now Michaels, and then the Addi case  
25 is Corvias.

## PROCEEDINGS

1                   THE COURT: Okay.

2                   MR. BALDONI: So it's all three of the  
3 other developers in this.

4                   THE COURT: So what are -- what -- in the  
5 Monterey and the Meade cases, what are -- what are  
6 the nature of the claim? Who are the plaintiffs in  
7 those cases, and what are the nature of the claims?

8                   MR. BALDONI: The nature of the claims are  
9 very similar to what's covered by our unclean-hands  
10 defense, inadequate maintenance of the projects,  
11 misrepresentations about the maintenance of the  
12 projects. It's a very overlapping set of facts as  
13 to what's alleged in our unclean-hands defense.

14                  And, again, the relevance is the same as  
15 for, you know, the Balfour Beatty documents that  
16 were produced earlier, which is that the  
17 mismanagement of the projects, the failure to  
18 maintain the projects, that impairs AMBAC security  
19 interests.

20                  I know Jefferies alleges in their defense  
21 that they may have asked for a higher interest rate  
22 had they known about these failures of management  
23 and maintenance, so there's a significant overlap.  
24 There's --

25                  THE COURT: What's the status of those two

## PROCEEDINGS

1 cases?

2 MR. BALDONI: So the -- let me -- one of  
3 them -- let me just make sure I get the dates right.  
4 So the Addi case involving Corvias, that was  
5 dismissed based on a settlement in, I believe, May  
6 of this year, of 2022.

7 THE COURT: Okay.

8 MR. BALDONI: And there -- on the public  
9 docket, there's a number of letters about the status  
10 of document productions indicating that productions  
11 were made. And it seems, based on public  
12 information, that they would be relevant to our case  
13 here. So that case settled just about five or six  
14 months after the Balfour Beatty guilty plea.

15 And the other case, the D'Antonio case  
16 involving Monterey, that one -- document  
17 discovery -- at least according to the public  
18 docket -- ended last month. I believe it was  
19 November 7th.

20 THE COURT: Okay.

21 MR. BALDONI: So, again, we have reason to  
22 believe that documents were produced in that case,  
23 and they would be relevant here. And as Your Honor  
24 has indicated earlier, we think reproducing  
25 documents that were produced in another litigation

## PROCEEDINGS

1 is a fairly low-burden way for us to get -- fill in  
2 some of these gaps about unclean-hands documents.

3 THE COURT: Right, but what I'm not  
4 understanding -- I understand that there are gaps in  
5 the other unclean-hands productions that you've  
6 gotten, but why does that matter, you know, that  
7 these two are not there?

8 In other words, you should have plenty to  
9 prove the unclean-hands defense, I would think, from  
10 all the government investigations. Is it -- is  
11 there any reason to believe that what's in these  
12 two, with these two projects, was any different than  
13 any of the others?

14 MR. BALDONI: Well, these are different  
15 developers, and they have different people managing  
16 the projects. It's not the same cast of characters  
17 across each project. And if, say, there's a motion  
18 to sever pending, if the case is broken up into  
19 different cases, we'll have the unclean-hands  
20 defense in different cases.

21 THE COURT: Right.

22 MR. BALDONI: Same thing if Balfour Beatty  
23 decides we're going to, you know, settle our  
24 plaintiffs --

25 THE COURT: Right.

## PROCEEDINGS

1 MR. BALDONI: -- but then the other  
2 plaintiffs go on, we would want to assert the  
3 unclean-hands defense as to each of the plaintiffs.

4 THE COURT: Okay. Okay. Ms. Tabaksblat or  
5 Ms. McCafferty? Okay.

6 MS. TABAKSBLAT: So, Your Honor, I heard  
7 counsel talk about gaps in the production and the  
8 relevance of these documents, but what hasn't been  
9 set forth in any of the meet-and-confers -- and  
10 we've had several of them -- or in any of the  
11 letters that were sent to the Court, are what these  
12 gaps are.

13 What we've produced -- and we've obviously  
14 spent a lot of time -- the Court's time and  
15 attention on this issue -- are presentations for all  
16 the developers, to the extent that they existed,  
17 that summarized these conditions and these issues.

18 So in the context of Corvias, to the extent  
19 that there would be an order to sever the claims, or  
20 there would be a settlement where only certain  
21 parties were left in the case, we have produced  
22 summary presentations, or presentations that were  
23 made.

24 In addition to the presentations, there  
25 were also -- I believe it was quarterly reporting

## PROCEEDINGS

1 that was done concerning the condition of these  
2 projects, and those were turned over as well. And  
3 so --

4 THE COURT: Including the Meade and  
5 the Monterey projects were included?

6 MS. TABAKSBLAT: These were Corvias, so  
7 specifically with respect to Meade.

8 With respect to Monterey, I believe Clark  
9 did make a production. I believe that was limited  
10 to -- and that would have come from the third party,  
11 Clark. I believe that was limited to a summary --  
12 to presentations to the government, as opposed to  
13 these quarterly filings. And I don't know if they  
14 existed. I know that they did in the case of  
15 Corvias.

16 But so what I haven't heard is what the  
17 relevance of these are and how, based on that  
18 relevance -- if it's relevant, what the gaps are,  
19 and how, based on that, those gaps, what the  
20 relevance is at all. But I think that is very  
21 critical, Your Honor, because, again, I'm not  
22 counsel in any of those cases. I have no idea.

23 I don't have access to those documents.  
24 They are not within my custody and control. I  
25 imagine there are thousands, if not tens or hundreds

## PROCEEDINGS

1 of thousands of documents. And it seems to me that  
2 even if there is some relevance here, which I quite  
3 honestly question, and Your Honor has spent a lot of  
4 time --

5 THE COURT: I've also already overruled you  
6 on that, too, so we're not going to re-litigate  
7 that.

8 MS. TABAKSBLAT: Well, we didn't -- no,  
9 Your Honor, if I -- if I remember correctly, at the  
10 February 2022 hearing, you specifically excluded  
11 private litigations from the production.

12 THE COURT: I said we would reconsider it  
13 after we saw which -- what was produced from the  
14 government. And so what I hear Mr. Baldoni saying  
15 is, okay, we have all that, but what's -- we don't  
16 have anything that talks about Meade and Monterey  
17 specifically.

18 MS. TABAKSBLAT: Well, he didn't say that  
19 we don't have anything that talks about Meade and  
20 Monterey specifically. He said we have gaps. We  
21 certainly have produced documents with respect to  
22 Meade specifically, and I believe with respect to  
23 Monterey as well, but for sure, with respect to  
24 Meade.

25 THE COURT: And unclean-hands documents as

## PROCEEDINGS

1 to those two? Okay.

2 MS. TABAKSBLAT: We've produced government  
3 presentations for the Corvias projects, as well as  
4 these quarterly reports for Corvias.

5 THE COURT: Okay.

6 MS. TABAKSBLAT: And so what is missing  
7 from what Mr. Baldoni just articulated is what these  
8 gaps are specifically that he's claiming are  
9 missing.

10 THE COURT: Mr. Baldoni?

11 MR. BALDONI: Yes. Ms. Tabaksblat said "to  
12 the extent they exist," and that's kind of the whole  
13 meat of the problem. We looked at these documents  
14 that were produced. There are some summary  
15 documents about Meade, for example, but they're not  
16 summary documents about the conditions of the  
17 project that we have for Balfour Beatty projects,  
18 for example.

19 For Meade, it's more like a summary of the  
20 project as a whole, and there's an offhand mention  
21 of, you know, there's a maintenance obligation or  
22 issue or something like that. We are lacking the  
23 sort of summary documents analyzing the maintenance  
24 issues with the projects. We're missing the sorts  
25 of investigatory documents about the allegations of

## PROCEEDINGS

1 misrepresentations about the maintenance issues.

2 It's hard to prove a negative, Your Honor.  
3 We can go through, you know, document by document,  
4 some of what we have in terms of unclean hands from  
5 Meade and Monterey, but the bottom line of it is we  
6 don't have meaningful productions for the conditions  
7 of the -- these two projects and alleged  
8 misrepresentations about the maintenance of these  
9 projects for these two.

10 And, you know, like I said, we can go  
11 through document by document on what we have and why  
12 that's enough, but this is the sort of shortcut that  
13 we can use to not spend a lot of time on this.

14 THE COURT: Well, what I don't understand  
15 is how this hindered you at all. And, you know,  
16 we're at the stage of taking depositions. So why do  
17 you need this?

18 MR. BALDONI: We want to be able to --  
19 well, this matters for summary judgment as -- and  
20 trial as well, Your Honor. But for -- we want to  
21 confront a witness with, you knew that this was an  
22 incorrect statement about the state of maintenance  
23 of the projects. You knew that this maintenance  
24 request had not actually been done; right. You knew  
25 that these mold issues were so -- for example, a

## PROCEEDINGS

1 summary document might say, of the 500 houses, 400  
2 of them have severe mold problems that need to be  
3 addressed.

4 We don't have those sort of summary  
5 documents about the condition of the projects. And  
6 those are the sort of documents that we could put in  
7 front of the witness who was in charge of Meade and  
8 say, you were aware of this, right? You weren't  
9 putting funds towards this, right? And we could  
10 show that the misconduct there was enough to support  
11 our unclean-hands defense for that particular  
12 project.

13 THE COURT: All right. So what -- when you  
14 say "summary documents," what -- the summary  
15 documents that you have for the other projects are  
16 summaries given to the government that talk about  
17 the housing conditions and complaints about the  
18 housing or what?

19 MR. BALDONI: Well, there's a mix. For the  
20 Balfour Beatty projects, they got into quite a bit  
21 of detail because they were trying to avoid pleading  
22 guilty, as they ultimately did --

23 THE COURT: Right.

24 MR. BALDONI: -- about the extent of their  
25 misconduct, the pervasiveness of the fraud; that

## PROCEEDINGS

1 sort of thing. It's hard to know what's likely in  
2 the D'Antonio and Addi productions without seeing  
3 them, but presumably the document requests in those  
4 cases were about the same sorts of questions that  
5 we're asking here, which is, give us any documents  
6 that include an overview of the maintenance issues  
7 of these projects, any summaries of the complaints  
8 about conditions at the projects, any -- for  
9 misrepresentations, it's probably more specific, any  
10 misrepresentation.

11 To some degree, we know that documents like  
12 this were requested in the litigations, just based  
13 on public information on the docket. For others,  
14 you know, it's kind of an inference based on the  
15 allegations in the underlying complaints.

16 THE COURT: Right, but Corvias and  
17 Michael's weren't, as far as we know, investigated  
18 criminally, right?

19 MR. BALDONI: I believe Corvias was to some  
20 degree. I don't want to get that wrong, so I don't  
21 want to say that for sure, but --

22 THE COURT: Okay. All right. Well -- but  
23 unlike Balfour Beatty, they didn't plead guilty;  
24 let's put it that way, right?

25 MR. BALDONI: Yes, Your Honor.

## PROCEEDINGS

1                   THE COURT: Okay.

2                   All right. Well, Ms. Tabaksblat, would you  
3 be willing to inquire of whoever represented the  
4 plaintiffs in the Monterey and the Meade cases  
5 whether there's, you know, any summary documents  
6 about the conditions and the complaints about the  
7 conditions that exist that have been produced?

8                   MS. TABAKSBLAT: Yes. And just to clarify,  
9 Your Honor, are you asking if there are summary  
10 documents made -- to the extent that there were  
11 summary documents made to the government, those were  
12 produced --

13                  THE COURT: No, produced in the civil  
14 litigation that weren't otherwise produced to the  
15 government.

16                  MS. TABAKSBLAT: We will inquire about  
17 that.

18                  THE COURT: Okay. All right. So if you  
19 could do that and notify Mr. Baldoni, we'll talk  
20 about a deadline for that at the end, I guess,  
21 because we have some other things to schedule.

22                  All right. So, Mr. Baldoni, just so I sort  
23 of document this correctly, summary documents that  
24 talk about the conditions of the projects and  
25 maintenance issues?

## PROCEEDINGS

1                   MR. BALDONI: And also any  
2 misrepresentations or allegations of fraud with  
3 respect to the maintenance of the projects and the  
4 conditions.

5                   THE COURT: Well, that would be in the  
6 pleadings. I -- so what I'm looking for is --  
7 that's going not in the direction that I want to go  
8 in. I want to talk about what the facts are. I  
9 don't want to talk about what the allegations were.  
10 So if there are summary documents about the  
11 conditions or dealing with maintenance issues,  
12 that's what I'm focused on; is that fair?

13                   MR. BALDONI: Yes.

14                   THE COURT: Okay. Okay. And for those  
15 two, for Monterey and Meade, is there a particular  
16 time period?

17                   MR. BALDONI: We would ask that it be  
18 coextensive with these two cases.

19                   THE COURT: Okay.

20                   MR. BALDONI: I believe -- well, actually,  
21 Your Honor, I believe Meade was closed in 2002 and  
22 Monterey was closed in 2003, so we would want  
23 information around the time of closing. And based  
24 on the nature of the unclean-hands defense, we do  
25 need documents kind of on an ongoing basis. So this

## PROCEEDINGS

1 is quite a long time period, but that's what's  
2 necessitated by the unclean-hands defense.

3 THE COURT: Okay. All right. Okay.

4 Anything else on that, Mr. Baldoni?

5 MR. BALDONI: One note in terms of custody  
6 and control for the Monterey Bay case, and I believe  
7 for -- well, for Monterey Bay, it is a plaintiff in  
8 this case, so --

9 THE COURT: Right.

10 MR. BALDONI: -- it doesn't make sense to  
11 say there's no custody or control.

12 For the Addi case, Corvias is a defendant,  
13 which is a developer in this case. So, again, I  
14 don't think there's any issue with custody and  
15 control of the relevant documents.

16 THE COURT: Okay. I don't think so.

17 So, Ms. Tabaksblat, you'll investigate that  
18 for us. Thank you. Okay.

19 I think those are all the issues that were  
20 listed in your letter, Ms. Tabaksblat. Anything  
21 else you wanted to raise?

22 MS. TABAKSBLAT: The only other thing is  
23 that Your Honor alluded to our motion for  
24 reconsideration. It's fully briefed before --

25 THE COURT: I'm going to get to that at the

## PROCEEDINGS

1 end. Yep. Okay.

2 All right. So then I have -- I guess,  
3 Mr. Balber, we will take your letter next. Any  
4 issues you've raised that we haven't already  
5 covered?

6 MR. BALBER: No, Your Honor.

7 THE COURT: Okay.

8 MR. BALBER: The only issue was the  
9 30(b) (6) issue. I think we need a date for the  
10 provision of the interest rate information we talked  
11 about.

12 THE COURT: Yeah. I was going to do -- I  
13 was going to do all the dates at the end, if that's  
14 okay.

15 MR. BALBER: Then we're good, Your Honor.

16 THE COURT: Okay. All right. Thank you.

17 Okay, Mr. Ray, any other issues in your  
18 letter?

19 MS. KIRSHNER: Good afternoon, Your Honor.  
20 It's nice to be here. I am here for the first time.

21 THE COURT: Good. Welcome.

22 MS. KIRSHNER: We -- so the first issue we  
23 have in our letter is the common-interest privilege  
24 log issue.

25 THE COURT: That's going to be next after

## PROCEEDINGS

1 we go through everything, yeah.

2 MS. KIRSHNER: Okay. So then the only  
3 other issue we had was our request for the extension  
4 of the contention (inaudible).

5 So our request there is -- the deadline is  
6 December 27th for that, and the request-to-admit  
7 deadline is January 23rd. So given where we are in  
8 terms of depositions, as of right now 30(b)(6)  
9 depositions have taken place, we would request that  
10 that contention interrogatory deadline be extended  
11 to align with the request-to-admit deadline.

12 THE COURT: Yeah.

13 MS. KIRSHNER: Previously, Your Honor's  
14 scheduling order (inaudible) interim deadline. The  
15 most recent order did, which was when (inaudible)  
16 formally requested it, but the parties were all --

17 THE COURT: Okay.

18 MS. KIRSHNER: -- (inaudible) to that.

19 THE COURT: So January 23rd would be the  
20 new deadline. Okay.

21 Agreement? Everybody's nodding. Okay.  
22 All right. So be it. That was an easy one.

23 MS. KIRSHNER: And then there is the common  
24 interest.

25 THE COURT: Yeah. Yeah. I'm trying to get

## PROCEEDINGS

1 through everything, sort of the housekeeping stuff,  
2 and then we'll get to the really meaty stuff. Okay.  
3 Thank you, Ms. Kirshner.

4 All right. Mr. Jones or Mr. Baldoni,  
5 anything else in your letter?

6 MR. BALDONI: Yes, Your Honor, we have the  
7 issue to preclude plaintiffs' new categories of  
8 damages.

9 THE COURT: Yep.

10 MR. BALDONI: So the -- you know, the short  
11 of it here is that plaintiffs made their initial  
12 disclosures about damages in 2018. They  
13 supplemented them once, which was also in 2018.  
14 They have not supplemented their initial disclosures  
15 about damages since.

16 In September of 2022, they disclosed three  
17 entirely new categories of damages for the first  
18 time in a response to a Jefferies interrogatory.  
19 But, like I said, they have not updated their  
20 Rule 26 disclosures.

21 THE COURT: We're still in fact discovery,  
22 right?

23 MR. BALBER: Yes.

24 THE COURT: Okay. So it's not really ripe  
25 yet.

## PROCEEDINGS

1                   MR. BALDONI: I believe it is, Your Honor.  
2 I don't think Rule 37 has a deadline that the, you  
3 know, failure to disclose has to happen after the  
4 close of fact discovery. It requires, under  
5 Rule 26, timely supplementation of damages,  
6 computations and categories. We -- our position is  
7 that's not been done.

8                   In this case, it took literally years to  
9 negotiate the scope of document productions. We  
10 litigated before Your Honor the number of  
11 depositions, given the scope of the case, in terms  
12 of subject matter and, you know, size of the case in  
13 terms of money.

14                  So we think it is, right now, plaintiffs  
15 have failed to timely disclose these new categories  
16 of damages. We don't think that there's any reason  
17 for them to have done that.

18                  These damages theories are based on -- as  
19 far as we can tell -- documents that were produced  
20 many years ago, and they open up entire new subject  
21 matters -- subject-matter areas of the case.  
22 They're each about a market for a financial product  
23 15 to 20 years ago that doesn't so much as appear in  
24 the complaint.

25                  THE COURT: So why isn't this a summary

## PROCEEDINGS

1 judgment issue?

2 MR. BALDONI: There are cases holding that  
3 this is not a summary judgment issue because this is  
4 under Rule 37. Rule 37 is about preclusion of  
5 things that have not been adequately disclosed under  
6 Rule 26. I can probably get you a cite, if you need  
7 it --

8 THE COURT: All right.

9 MR. BALDONI: -- but the -- Rule 37 is  
10 designed specifically to incentivize plaintiffs to  
11 disclose their damages theories and computations  
12 early in the case so that they can be the subject of  
13 fact discovery so that we can ask for documents  
14 about them, so that we can take depositions about  
15 them. Here we are, you know, five years into the  
16 case with the --

17 THE COURT: We -- and we haven't finished  
18 depositions yet.

19 MR. BALDONI: Right. So opening three new  
20 subject-matter areas of the case where plaintiffs  
21 said that it took their experts months to figure out  
22 these new theories, we'll have to do the same. And  
23 then we will have to add deponents about these  
24 topics to the list. We'll have to go to third  
25 parties about these three new financial markets from

## PROCEEDINGS

1       20 years ago and say, you know, Third Party  
2       Number 1, how did this market work? Was Plaintiff  
3       actually ripped off in this market? Theory Number  
4       2, was Plaintiff actually ripped off in this market?

5           These are all things that are not at all in  
6       plaintiffs' complaint. And I agree with Your Honor  
7       that if these theories are not precluded now, we  
8       will likely -- or we may, I suppose, move for  
9       summary judgment about them. But Rule 37 is  
10       designed precisely to eliminate that waste and cut  
11       the theories off early because they failed to  
12       disclose them.

13           THE COURT: Ms. Tabaksblat or  
14       Ms. McCafferty?

15           MS. TABAKSBLAT: Thank you, Your Honor.

16           So we think Your Honor is exactly correct.  
17       We -- first of all, when Your Honor addressed the  
18       disclosure requirements for damages at the September  
19       2021 hearing, you said, I mean, they're called  
20       initial disclosures for a reason. It's not the be  
21       all and end all.

22           These new damage theories -- or not even  
23       new damage theories, but these extensions of damage  
24       theories that have been previously disclosed are  
25       based entirely on documents we received from various

## PROCEEDINGS

1 parties, both the defendants, as well as third  
2 parties in discovery. They were ascertained based  
3 on extensive review by our experts, not by lawyers  
4 or anyone who would have been able to ascertain  
5 them. They were disclosed in September of 2022,  
6 which, even before the discovery deadline was  
7 extended, was months before the existing deadline;  
8 and, now, with the new extension, is close to six  
9 months. They were disclosed before a single  
10 deposition in this case was taken, and so there's  
11 ample time.

12 And the only other thing I'll say on this  
13 is that the three cases that AMBAC cites in their  
14 letter -- obviously, it's not on a full record, but  
15 those three cases all involve a disclosure either  
16 after the close of fact discovery or within a week  
17 or two before the close of fact discovery. And the  
18 facts here are just clearly distinguishable.

19 THE COURT: Well, to the extent that AMBAC  
20 is asking permission to make a 37(c)(1) sanctions  
21 motion now, I'm going to deny that request. And let  
22 me just say this, as to any other discovery  
23 sanctions motion, save it until the end of fact  
24 discovery. I have so much on my plate with you  
25 guys, it really is not efficient when you raise

## PROCEEDINGS

1 issues that are not ripe and that can be left until  
2 the end.

3 You know, you can -- you'll have to gamble  
4 on this, Mr. Baldoni. Either you decide not to ask  
5 questions or you do. But at this point, it is not a  
6 good use of the parties' time or my time to be  
7 dealing with sanctions motions while discovery is  
8 still pending.

9 So the request to move for sanctions at  
10 this time is denied without prejudice. And when --  
11 once we -- if we ever get to the end of fact  
12 discovery, we'll talk about what anybody wants to  
13 seek sanctions against anybody else about.

14 And if you want an example of how we did  
15 this, I did it in the Curren (phonetic) case, we  
16 waited until the end and we dealt with it all at  
17 once. So that's how we're going to do it here.  
18 Okay.

19 Mr. Baldoni or Mr. Jones, any other issues,  
20 sort of conference-related issues, from AMBAC before  
21 we turn to privilege and the motion for  
22 reconsideration?

23 MR. JONES: So the one issue remaining from  
24 our letter is the Malvern subpoena. I don't know if  
25 you want to discuss that now.

## PROCEEDINGS

1                   THE COURT:  Yep, we can do that.

2                   MR. JONES:  Ms. Williams will handle that.

3                   THE COURT:  Okay.  Very good.  Go ahead.

4                   MS. WILLIAMS:  Good afternoon, Your Honor.

5                   THE COURT:  Good afternoon.

6                   MS. WILLIAMS:  Your Honor, in February of  
7 this year, we subpoenaed Malvern Capital Partners on  
8 behalf of our client, AMBAC.  Malvern is a sole  
9 proprietorship; that is, its sole principal is  
10 Austin Repetto, who was the former VP of finance for  
11 GMH, now known in this case as Balfour Beatty  
12 Communities.

13                  And, Your Honor, we subpoenaed Malvern  
14 based on a -- or a response to interrogatories from  
15 plaintiffs identifying Malvern as their financial  
16 advisor.  We also identified documents that included  
17 Mr. Repetto, in his capacity as sole principal of  
18 Malvern, he was communicating with various  
19 representatives at BBC with regards to both  
20 plaintiff and non-plaintiff projects.

21                  So in response to our subpoena, Malvern's  
22 counsel objected, objected.  And several months  
23 later, we had a joint meet-and-confer with him.  In  
24 that meet-and-confer, Mr. Trachtenberg, Malvern's  
25 counsel, sort of took the position that he sees our

## PROCEEDINGS

1 subpoena -- the document request included in our  
2 subpoena in two categories, documents relating to  
3 plaintiff projects and documents relating to  
4 non-plaintiff projects.

5 With respect to the plaintiff projects,  
6 Mr. Trachtenberg explained that his client didn't  
7 have any involvement with those plaintiff projects  
8 and, therefore, he wouldn't search for any  
9 responsive documents. And he also took the position  
10 with respect to non-plaintiff projects that, you  
11 know, the only way he would move forward in terms of  
12 searching for documents that are responsive to our  
13 subpoena is if AMBAC agreed to pay both his legal  
14 fees, as well as any costs associated with complying  
15 with the subpoena.

16 Now, Your Honor, first, as an initial  
17 matter, there's an issue with Mr. Trachtenberg's  
18 categorization of our document request because it  
19 overlooks several categories of documents that are  
20 unrelated to either plaintiff or non-plaintiff  
21 projects.

22 THE COURT: Okay. So what are those  
23 documents, those other categories?

24 MS. WILLIAMS: Sure, Your Honor, we've  
25 requested also -- with respect to RFP 39, we've

## PROCEEDINGS

1 requested communications concerning GMAC, Jefferies  
2 and Dan Ray that they were partial to AMBAC with  
3 respect to credit enhancement.

4 We've also requested with -- for -- and for  
5 RFP 49, we've also requested contracts, agreements,  
6 or engagement letters between Malvern and the  
7 developers. And with respect to RFP 51, we've also  
8 requested documents considering the decision --  
9 plaintiffs' decision to join -- any of the  
10 plaintiffs' decision to join this action.

11 THE COURT: Okay. So I get communications  
12 with GMAC, Jefferies and Ray. Why do you need  
13 contracts with the developers and Malvern?

14 MS. WILLIAMS: Your Honor, because the -- I  
15 think the plaintiffs here, I'm -- it seems as though  
16 they were -- they didn't have their individual  
17 employees. And so with respect to each of these  
18 plaintiffs, they were ran by developers, various  
19 different developers. And so it's unclear to us who  
20 exactly -- which specific entity Malvern worked  
21 with, whether or not they worked with just BBC or  
22 any of the other developers -- Michaels or any of  
23 the other developers involved in this action.  
24 That's the reason why we requested engagement  
25 letters between Malvern and any of the other

## PROCEEDINGS

1 developers.

2 THE COURT: Okay.

3 MS. WILLIAMS: Now, we did receive in our  
4 production one engagement letter between BBC and  
5 Malvern, but it's unclear to us the scope of work  
6 that Malvern has engaged in with respect to either  
7 just BBC or the other developers as well.

8 THE COURT: Okay. So then -- and you've  
9 taken Mr. Repetto's deposition?

10 MS. WILLIAMS: We have taken Mr. Repetto's  
11 deposition, Your Honor. And in that deposition, we  
12 were only limited to documents that we have received  
13 from BBC.

14 THE COURT: Okay.

15 MS. WILLIAMS: And during the course of the  
16 deposition, Mr. Repetto had difficulty recalling a  
17 lot of the discussions that he was included in. So  
18 it only further underscores, Your Honor, the need  
19 for us to receive the documents that are in his  
20 possession.

21 THE COURT: Right.

22 MS. WILLIAMS: He was unable to recall very  
23 basic concepts. For instance, he was unable to  
24 recall, you know, why he thought that -- during his  
25 time as the VP for finance, why he thought that GMAC

## PROCEEDINGS

1 would have been -- was selected over other lenders  
2 or with respect to concepts relating -- excuse me --  
3 with respect to concepts like the rate lock and  
4 other issues in the case, Mr. Repetto was unable to  
5 recall, and --

6 THE COURT: Was he a decision-maker for any  
7 of the plaintiffs?

8 MS. WILLIAMS: It seems that way.

9 THE COURT: Okay.

10 MS. WILLIAMS: He -- in his role with -- at  
11 BBC, he is a -- he was the VP of finance. And so he  
12 worked for those -- the plaintiff entity, I believe,  
13 Stewart, Bragg, Fort Bragg. He worked on those  
14 transactions. And in his role with BBC was -- I  
15 don't want to say he was the sole decision-maker,  
16 but he did play a role in the financing and  
17 debt-collection process of GMAC.

18 THE COURT: Okay. So he was at BBC when he  
19 made that decision?

20 MS. WILLIAMS: Right.

21 THE COURT: So --

22 MS. WILLIAMS: GMH, formerly known as --

23 THE COURT: Okay. So when did he set up  
24 Malvern?

25 MS. WILLIAMS: He set up Malvern in March

## PROCEEDINGS

1 of 2005.

2 THE COURT: Okay. And so then what was --  
3 well, this kind of gets into some of the privilege  
4 issues that we're going to be talking about, but I  
5 guess, you know, we're sort of creeping into that,  
6 so I'll be giving everybody a chance to speak on  
7 this, but the plaintiffs say that Malvern was the  
8 functional equivalent of one of their employees and  
9 they're seeking privilege over those documents.

10 So I'm a little confused about -- well,  
11 for -- and just to confirm, there's nobody here from  
12 Malvern, right?

13 Nobody's speaking on Malvern's behalf. So  
14 I don't know why Mr. Trachtenberg didn't come, but,  
15 anyway --

16 MS. WILLIAMS: Your Honor, if I may --

17 THE COURT: Yeah.

18 MS. WILLIAMS: -- you know, we're confused  
19 as well because there seems to be a lot of  
20 inconsistencies between what Malvern is saying and  
21 what the plaintiffs are saying.

22 THE COURT: Yeah.

23 MS. WILLIAMS: For example, plaintiffs have  
24 identified Malvern as the financial advisor to the  
25 developers, and Malvern is saying they don't know

## PROCEEDINGS

1 why plaintiffs have done that.

2 THE COURT: Right.

3 MS. WILLIAMS: Plaintiffs are now saying  
4 that Malvern was their employee --

5 THE COURT: Yeah.

6 MS. WILLIAMS: -- and Malvern is saying,  
7 Well, I didn't -- I've never done any work for  
8 plaintiffs. So it is -- Your Honor, there seems to  
9 be a lot of inconsistencies between what the  
10 plaintiffs are saying and what Malvern is saying.

11 THE COURT: Okay. So -- well, let me ask  
12 you this, with respect to -- just to -- I'm sorry to  
13 jump around, but the first -- first RFP that you  
14 mentioned was communications with GMAC, Jefferies  
15 and Ray. So haven't Jefferies and Ray produced any  
16 communications with Mr. Repetto or Malvern or you --  
17 I thought you told me Request Number 39 was for  
18 communications with GMAC, Jefferies and Ray. Maybe  
19 I miswrote down what you said.

20 MS. WILLIAMS: Right. Any communications  
21 that would indicate that GMAC or Jefferies was  
22 somehow partial to AMBAC for -- with respect to  
23 credit enhancement. Now, those communications could  
24 have been with plaintiffs. They could have been  
25 internally within Mr. -- within Malvern's --

## PROCEEDINGS

1       between -- I'm sorry. Those communications could  
2       have been with plaintiffs. They could have been  
3       with other individuals. But we --

4                   THE COURT: Sorry. Who was partial to  
5       AMBAC? The plaintiffs were partial to AMBAC or  
6       Mr. Repetto was partial to AMBAC? I'm not  
7       following.

8                   MS. WILLIAMS: If I may, Your Honor.

9                   THE COURT: Yes.

10                  MS. WILLIAMS: Any communications that  
11       suggest GMAC or Jefferies or Mr. Ray were partial to  
12       AMBAC with respect to credit enhancement.

13                  THE COURT: I see. Okay. Okay. But I  
14       guess we know -- we would know that from Jefferies  
15       or Ray though, right?

16                  MS. WILLIAMS: Well, not necessarily, Your  
17       Honor, because if the plaintiffs are -- if  
18       Mr. Repetto was having communications with any other  
19       entity, or even plaintiffs concerning AMBAC or  
20       Jefferies or Mr. Ray or Cap -- GMAC being favored --  
21       favoring AMBAC over other monolines, those  
22       communications wouldn't necessarily be in Mr. Ray's  
23       or Jefferies' possession.

24                  THE COURT: Okay. But why does that  
25       matter?

## PROCEEDINGS

1                   Let's just say they were partial to AMBAC.  
2 I mean, I think Mr. Balber told me a little while  
3 ago he didn't have any -- Jefferies didn't have  
4 anything to do with AMBAC, so...

5                   MS. WILLIAMS: Well, Capmark or GMAC, Your  
6 Honor, if Mr. -- if Mr. Repetto has communications  
7 during the time which he worked with Malvern --  
8 worked at Malvern concerning AMBAC or AMBAC being  
9 favored by the underwriter that was working on these  
10 transactions, we think that those communications are  
11 relevant and should be produced.

12                  We'd like to know what was the -- what was  
13 the thinking? What was the -- his understanding of  
14 whether or not AMBAC was favored or AMBAC was  
15 subject to competitive bidding along with the other  
16 monolines for the role as credit enhancer.

17                  THE COURT: Have you given Malvern,  
18 Mr. Trachtenberg, a proposed list of search terms  
19 that you want them to run on communications?

20                  MS. WILLIAMS: Your Honor, we haven't  
21 even -- we weren't even able to sort of get there  
22 with Mr. Trachtenberg. Mr. Trachtenberg, very early  
23 on, took the position that with respect to the  
24 plaintiff projects, his client had no involvement  
25 with the plaintiffs and, therefore, he's not even

## PROCEEDINGS

1 going to look for documents.

2 THE COURT: Okay.

3 MS. WILLIAMS: The problem with that  
4 position, Your Honor --

5 THE COURT: It's opposite of what the  
6 plaintiffs have said, yeah.

7 MS. WILLIAMS: It's the opposite of what  
8 the plaintiffs have said. But also, Your Honor,  
9 they've produced an engagement letter suggesting  
10 that, you know, he provided consulting services.

11 But also, Your Honor, the -- there's  
12 overlap between the personnel for each of the -- for  
13 each of the various plaintiffs. So the developers  
14 had about four or five personnel that worked on each  
15 of the plaintiff projects. So communications and  
16 discussions and conversations relevant to one  
17 plaintiff, a non-plaintiff entity, could also be  
18 relevant to the plaintiff entities as well.

19 THE COURT: All right. Well, let me say  
20 this, Malvern needs to produce some documents  
21 responsive to the subpoena. I think the parties  
22 should meet and confer about what that should be. I  
23 think Malvern's objection to producing anything at  
24 all ever is not well founded based on the  
25 information that's been given to me in this case,

## PROCEEDINGS

1       particularly in connection with the privilege  
2       issues.

3                   So Malvern is not here today, so I'm not  
4       going to take time during this conference to tick  
5       through what those are, but my ruling is that  
6       Malvern needs to produce documents.

7                   I agree that the parties should meet and  
8       confer about minimizing the scope and the burden on  
9       somebody who's not a party to this case, so that --  
10      that was the reason for my suggestion that you  
11      propose search terms that will go at the  
12      communications that you want. Contracts with the  
13      developers, that shouldn't be particularly  
14      burdensome. Most, I would hope would be -- that  
15      shouldn't be a huge universe of what exists. And  
16      51 -- I forget what 51 was.

17                  MS. WILLIAMS: I'm not sure, Your Honor.

18                  THE COURT: The plaintiffs' decision to  
19       join -- the plaintiffs' decision to join this  
20       action. I mean, that's probably getting into the  
21       privilege issue, so I'm not going to push on that  
22       one. But with respect to 39 and 49 that are the two  
23       that we've talked about today, I think those are  
24       reasonable requests. I think the parties should  
25       meet and confer -- you and Mr. Trachtenberg should

## PROCEEDINGS

1 meet and confer about a reasonable scope of search  
2 in response to those that would -- in response to  
3 those two requests that would get a reasonable  
4 amount of documents without imposing an undue burden  
5 on Malvern. And let's see where you get to on that.  
6 Okay?

7 MS. WILLIAMS: Okay, Your Honor. And with  
8 respect to documents involving the plaintiff  
9 projects --

10 THE COURT: Yeah.

11 MS. WILLIAMS: -- would it be okay for us  
12 to propose search terms as well?

13 THE COURT: Yeah.

14 MS. WILLIAMS: We're fine with working with  
15 Malvern to minimize any burden and happy to craft  
16 them.

17 THE COURT: Yes. As far as the non-MHPR  
18 projects, I mean, we've fought a lot about that in  
19 this case. I'm not inclined to push a non-party to  
20 produce documents that don't relate to the MHPR  
21 projects in this case. But let's focus on the  
22 plaintiff projects, the communications, the  
23 contracts, and hopefully that comes up with a  
24 reasonable scope.

25 Hi.

## PROCEEDINGS

1 MS. EPSTEIN: Sorry, Your Honor. Rachel  
2 Epstein.

3 THE COURT: Yes.

4 MS. EPSTEIN: I just have one potential  
5 proposal, which would be that Mr. Repetto  
6 (inaudible) search terms, run them, perhaps run a  
7 privilege screen.

8 THE COURT: Yeah.

9 MS. EPSTEIN: And then just (inaudible) one  
10 way (inaudible).

11 THE COURT: Okay. That makes sense. I'll  
12 leave that up to you to try to work that out. The  
13 privilege may change based on what happens with the  
14 other privilege issues that we're going to talk  
15 about, but that makes a lot of sense. So -- okay.  
16 Thank you.

17 MS. WILLIAMS: Thank you, Your Honor.

18 THE COURT: Thank you, Ms. Williams. Okay.

19 Any other AMBAC non-privilege,  
20 non-motion-for-reconsideration issues?

21 Okay. Thank you.

22 So let's talk about privilege. So I have  
23 the 30 examples and I have some questions.

24 First of all, Lou Derogatis,  
25 D-E-R-O-G-A-T-I-S, I did not see him listed on any

## PROCEEDINGS

1 of the attorney affiliation lists, and so I don't  
2 know who he is.

3 MS. TABAKSBLAT: He is an employee of BBC.  
4 He is not an attorney. He is in a finance position.

5 THE COURT: Finance? Okay.

6 MS. TABAKSBLAT: Yes.

7 THE COURT: Okay. Mark Lavin, L-A-V-I-N,  
8 he's on Exemplar Number 4. Ms. Hubley (phonetic) is  
9 asking him about -- it is a 2007 document, I think.

10 Mark Lavin? Nobody knows him?

11 MS. TABAKSBLAT: I believe he is a BBC  
12 employee.

13 THE COURT: Okay. Not lawyer? Non lawyer?

14 MS. TABAKSBLAT: Correct.

15 THE COURT: Okay. Anthony Rabin,  
16 R-A-B-I-N, Exemplar Number 5.

17 MS. TABAKSBLAT: Your Honor, we believe  
18 he's at BBC, but we would need to double check.

19 THE COURT: Okay. Okay. Chris Bond also?  
20 He's on the same e-mail.

21 MS. TABAKSBLAT: Same.

22 THE COURT: Okay.

23 MS. TABAKSBLAT: Possibly, he's at BBC,  
24 but we would need to check.

25 THE COURT: Okay.

## PROCEEDINGS

1                   Okay. Exemplar Number 12. What is Core  
2 Impact; C-O-R-E, I-M-P-A-C-T? Or who is Core  
3 Impact?

4                   MS. McAFFERTY: Your Honor, is that for --

5                   THE COURT: That's on Number 12.

6                   MS. McAFFERTY: Is that PL016912?

7                   THE COURT: No. 17737.

8                   MS. McAFFERTY: Your Honor, we would need  
9 to look into that.

10                  THE COURT: Okay. I'll just make a note of  
11 it. All right.

12                  And then the sort of overarching question  
13 is, only -- of the 30 exemplars that I have, only  
14 one indicates, Number 15, that the plaintiffs have  
15 asserted work product as to it as well; otherwise,  
16 we're just talking about attorney-client and common  
17 interest, right?

18                  MS. TABAKSBLAT: That's correct with  
19 respect to these exemplars. There's other  
20 third-party communications on the law for which we  
21 assert a work product assertion.

22                  THE COURT: Okay.

23                  MS. TABAKSBLAT: But with respect to the  
24 exemplars that the defendants chose, but we  
25 consented to, there's only one for which there is

## PROCEEDINGS

1 work product.

2 THE COURT: Okay. All right. And are the  
3 defendants challenging any of the work-product  
4 assertions by the plaintiffs? Or am I just  
5 evaluating attorney-client privilege and the  
6 common-interest exception thereto?

7 MS. KIRSHNER: So the defendants are  
8 challenging work product (inaudible). There are  
9 communications involving parties and any developers  
10 who don't appear to relate to the subject of  
11 validity --

12 THE COURT: Okay.

13 MS. KIRSHNER: (Inaudible.)

14 THE COURT: Okay. Okay. So that is it? A  
15 yes, other than this litigation. Okay.

16 MS. TABAKSBLAT: And, Your Honor, the DSRF  
17 litigation, I believe, counsel just indicated.

18 THE COURT: Yes. Okay. Because it looked  
19 to me there are at least, I think, five documents --  
20 five of the exemplars that I have that seem to  
21 relate to this litigation, but there's no  
22 work-product assertion marked on the log. Is -- so  
23 are the plaintiffs not asserting work product as to  
24 those documents then?

25 MS. TABAKSBLAT: Your Honor, I assume that

## PROCEEDINGS

1 that was an oversight. And I believe we're  
2 asserting -- we would be asserting both work product  
3 as well as attorney-client privilege.

4 THE COURT: Okay. Well, that really makes  
5 this a lot harder because I -- this started out as  
6 just common interest, and now it's a -- nobody's  
7 briefed work product for me.

8 MS. KIRSHNER: May I just point out in the  
9 bottom line (inaudible) --

10 THE COURT: No. 15 is 21496. That's the  
11 only one that's marked with a work-product  
12 assertion. Everything else -- all the other  
13 exemplars that I have, the only label that's affixed  
14 to them is attorney-client and common interest.  
15 Okay.

16 All right. So you're not challenging,  
17 are you? You are.

18 MS. KIRSHNER: Oh, I'm -- the plaintiffs  
19 are asserting (inaudible).

20 THE COURT: Okay.

21 MS. KIRSHNER: (Inaudible.)

22 THE COURT: All right. Okay.

23 So to the extent the plaintiffs are  
24 asserting work-product privilege but that it's not  
25 waived by virtue of the -- of the common interest,

## PROCEEDINGS

1 the defendants are still challenging that or not?  
2 Because a common interest is not a privilege. It's  
3 an exception to the rule that disclosure to a third  
4 party waives the privilege.

5 So what I'm trying to understand is  
6 whether -- if the plaintiffs are saying work product  
7 is a privilege that applies, but it's not waived by  
8 virtue of common interest, are the defendants  
9 challenging that as well?

10 MS. KIRSHNER: Yes, defendants are  
11 challenging that but for communications between the  
12 parties in the litigation, the present litigation  
13 and the DSRF litigation.

14 THE COURT: Okay.

15 MR. JONES: Your Honor?

16 THE COURT: Yes.

17 MR. JONES: This is also the first time  
18 we've heard that they're asserting work-product  
19 protection over some of these documents that, you  
20 know, they --

21 THE COURT: Yeah.

22 MR. JONES: -- talked to us about. So I  
23 think we would argue that they've waived  
24 work-product protection to the extent they haven't  
25 asserted it.

## PROCEEDINGS

1                   THE COURT: Yeah. Okay.

2                   So I -- I've tried to kind of break --  
3 break these into categories for purposes of  
4 understanding more what the parties are arguing  
5 about. Maybe it makes sense to talk about  
6 Clark/Duxbury first.

7                   So it appears that they're affiliated  
8 entities somehow. Is Duxbury a successor to Clark  
9 or an affiliate of Clark or what?

10                  MS. TABAKSBLAT: They are sister companies,  
11 Your Honor. They shared infrastructure and they  
12 shared -- they shared infrastructure. They shared,  
13 sort of, office space. And so to the extent that  
14 these -- they were essentially organized under a  
15 separate entity but to serve a function exclusively  
16 for Clark.

17                  In 2007, I believe -- and we have the  
18 specific date in our brief -- Duxbury expanded and  
19 provided these services for outside entities as  
20 well, but initially they were formed exclusively to  
21 provide advisory services for Clark and for no other  
22 purpose.

23                  And so I think, as we pointed out in our  
24 papers, to demonstrate, like, the proximity of the  
25 relationship, we didn't go separately, and there was

## PROCEEDINGS

1 no separate third-party subpoena served on Duxbury.  
2 But when this -- when there was an obligation to  
3 produce documents by Clark, they collected and  
4 produced documents on behalf of Duxbury as well.

5 THE COURT: Okay. Any of the defendants  
6 want to speak to the Clark/Duxbury relationship?

7 MR. JONES: I will briefly, Your Honor.

8 I don't believe they assert the  
9 common-interest exception with respect to Duxbury,  
10 so I think we're just talking about the Kovel  
11 doctrine and the functional-equivalent doctrine  
12 here.

13 THE COURT: Okay.

14 MR. JONES: I don't read anything  
15 plaintiffs have asserted as saying that Duxbury  
16 translated or interpreted information or  
17 communications that counsel was unable to understand  
18 on their own, and I think that's the requirement  
19 under the Kovel doctrine.

20 I also don't see plaintiffs to be saying  
21 that Duxbury was -- had primary responsibility for a  
22 key corporate role, which I think is the crux of the  
23 functional-equivalent doctrine. Duxbury doesn't  
24 seem to have had primary decision-making authority.  
25 They don't seem to have negotiated or dealt with

## PROCEEDINGS

1       third parties as representatives of plaintiffs on  
2       their behalf. So I don't think that any -- either  
3       the Kovel doctrine or the functional-equivalent  
4       doctrine apply here.

5                   THE COURT: Okay. Thank you.

6                   MS. TABAKSBLAT: Can I make a point with  
7       respect to all of these documents?

8                   THE COURT: Sure.

9                   MS. TABAKSBLAT: And I know we said this in  
10      our letter, but I think it's important for you to  
11      understand the context.

12                  We're not asserting that with respect to  
13      each of these third parties that there's some  
14      blanket privilege, and so there's no documents that  
15      needs to be produced, and that every communication  
16      with all these parties are privileged. We've  
17      produced thousands of documents between the  
18      developers and the military, the military and the  
19      developers and each of these third parties.

20                  We're saying in certain contexts, each of  
21      these serve a specific role that related to the  
22      provision or that -- the -- that related to the  
23      provision of legal advice. And in those contexts,  
24      the general waiver doesn't apply under one of the  
25      exceptions that we've articulated.

## PROCEEDINGS

1                   But with respect to Duxbury, we went  
2 through and, you know, the entire universe of what  
3 we're talking about here is something like 4,000  
4 entries. Of those 4,000 entries, as counsel just  
5 articulated, there is a subset that relate to the  
6 DSRF litigation, which is not even being contested.  
7 And then, you know, those are -- these are just a  
8 subset of these communications. We've produced  
9 thousands of communications with each of these  
10 entities.

11                  THE COURT: Right. Okay. Go ahead,  
12 Mr. Jones.

13                  MR. JONES: The role that Duxbury played is  
14 a foundational question that doesn't have anything  
15 to do with the -- a document-by-document analysis of  
16 the role that Duxbury was playing. Plaintiffs have  
17 made their arguments about the role that Duxbury was  
18 playing, and it doesn't establish that either of  
19 these exceptions apply.

20                  THE COURT: So if -- could you articulate  
21 for me if we could talk about -- putting aside the  
22 functional equivalent and Kovel for now, putting  
23 aside the advisors, let's focus on, sort of, the  
24 military branches.

25                  What is the common interest between the

## PROCEEDINGS

1 plaintiffs and the military branches that underlies  
2 what -- the documents that you've withheld as  
3 privileged?

4 MS. TABAKSBLAT: Your Honor, these are  
5 essentially joint owners in a project. And so  
6 nobody -- I don't think anyone would ever come in to  
7 this court and say, Well, there's two principals  
8 that own a company, and the lawyer is giving advice  
9 to both of them together, but that somehow breached  
10 the privilege, or even if those two principals each  
11 form their own legal, sole-purpose entity to then  
12 jointly own this company.

13 That's what we have here. We have the  
14 military branch and the developers are -- their  
15 joint-venture partners. This isn't separate  
16 entities, such as the cases the defendants cite,  
17 where you're dealing with an advertising agency and  
18 a company, and the advertising agency is giving  
19 advice to the company.

20 The military and the developers each own a  
21 percentage of these projects. And together they  
22 sought legal advice as to how to properly structure  
23 these projects, how to make sure that they complied  
24 with all available regulatory -- or required  
25 regulatory compliances, how to select a developer,

## PROCEEDINGS

1 and what different -- and what different  
2 considerations went into that.

3                   And as I articulated already, we're not  
4 claiming that every single communication with  
5 respect to each of these functions or each of these  
6 issues that a company faces implicate a legal issue  
7 that implicates a privilege. But what we did here  
8 is we looked at certain documents that either  
9 involved consideration of potential legal issues or  
10 involved counsel, and we assessed whether or not  
11 these -- these communications, involved legal  
12 issues. And in those cases, we asserted a privilege  
13 over those specific communications.

14                  THE COURT: Okay. Some of these though --  
15 so, like, Number 8, for example, 16724 -- well, I  
16 guess maybe that's not a good one. This is -- I  
17 think this one is talking about this litigation, so  
18 is -- are the defendants still challenging that one,  
19 Number 8, 16724, the January 2017 Kirkland memo?

20                  MS. KIRSHNER: Sorry, Your Honor, I don't  
21 have it right in front of me.

22                  THE COURT: Okay.

23                  MS. KIRSHNER: But if it's the 2017 memo, I  
24 believe that one is exemplar -- one of the first  
25 five documents.

## PROCEEDINGS

1 THE COURT: I'm sorry?

2 MS. KIRSHNER: This is one of the first  
3 five on the exemplary --

4 THE COURT: No, it's Number 8.

5 MS. KIRSHNER: Number 8? Sorry, Your  
6 Honor.

10 MS. TABAKSBLAT: That's correct. And it --  
11 and they represented the projects in the DSRF  
12 action.

13 THE COURT: Right.

14 MS. KIRSHNER: So, Your Honor, the reason  
15 why that is on the list of exemplar is the  
16 (inaudible) companies are included, so --

17 THE COURT: Okay.

18 MS. KIRSHNER: -- (inaudible) were another  
19 developer in the MHPI case that declined to join  
20 this litigation.

21 THE COURT: Okay.

22 MS. KIRSHNER: They were involved in the  
23 DSRF litigation.

24 THE COURT: Okay.

## PROCEEDINGS

1       communications relating to the present litigation,  
2       which they did not agree to join, our position is  
3       that their inclusion was privileged. They weren't  
4       part of the joint defense agreement in connection  
5       with this litigation (inaudible).

6               THE COURT: Okay.

7               MS. KIRSHNER: At the very least, you know,  
8       we -- I believe this document is not redacted, so,  
9       of course, if there's discussion about the  
10      litigation that they were involved in that they also  
11      (inaudible).

12              THE COURT: Okay.

13              MS. TABAKSBLAT: Your Honor?

14              THE COURT: Yes.

15              MS. TABAKSBLAT: I'd like to just point  
16       out -- and I believe counsel did just see this, is  
17       that the Hunts were parties to the DSRF litigation.  
18       This memo was written before this case was filed,  
19       and so it potentially involves discussions of both,  
20       but they would have been subject to a joint defense  
21       agreement in connection with that case.

22              THE COURT: Okay. MetLife Document Number  
23       1927338, nobody has any -- MetLife isn't anybody's  
24       financial advisor? There's no -- they weren't party  
25       to any of the projects?

PROCEEDINGS

1 MS. TABAKSBLAT: Your Honor, I believe  
2 MetLife was an advisor to a different -- so does  
3 this -- I think this involves a communication that's  
4 not a party to this case.

5 THE COURT: Yeah.

6 MS. TABAKSBLAT: As you know, we did  
7 produce communications concerning other non-MHPI  
8 plaintiffs, and I believe this involves -- MetLife  
9 is an advisor in connection with those projects.

10 THE COURT: Okay. So it was redacted for  
11 relevance, not privilege?

12 MS. TABAKSBLAT: Well, it was -- I believe  
13 MetLife is an advisor, but not in connection with  
14 any of the projects in our case.

15 THE COURT: Okay. So nobody would have any  
16 common interest with them?

17 MS. TABAKSBLAT: Well, the developer has  
18 the common interest. It's just not in connection  
19 with the -- one of the projects.

20 THE COURT: Well, the developers are not  
21 parties to this case.

22 So who is David Rozen, by the way?

23 R-O-Z-E --

24 MS. TABAKSBLAT: David Rozen is a former  
25 employee of Corvias.

## PROCEEDINGS

1                   THE COURT: Okay. Let me -- I guess,  
2 Ms. Kirshner, any other specific -- of the 30 that I  
3 have, is there anything else that you want me to  
4 understand about any of them in evaluating whether  
5 the privilege applies and has been --

6                   MS. KIRSHNER: Okay. Not the specific  
7 exemplars, but I can show you everything that --

8                   THE COURT: Sure. Of course.

9                   MS. KIRSHNER: (Inaudible).

10                  THE COURT: Yep.

11                  MS. KIRSHNER: -- relationships, but I  
12 think Mr. Jones touched on it, but (inaudible) they  
13 still are serving the common-interest exceptions  
14 with advisors, but they don't actually identify any  
15 common legal interest in their letters. So we have  
16 to (inaudible).

17                  So the meat of the issue for  
18 common-interest exceptions seems to be the  
19 military -- the military developers.

20                  Now, plaintiffs' counsel just mentioned,  
21 you know, these are joint ventures, and I think  
22 that's the issue here. They're relying entirely on  
23 the fact that these two entities set up an LLC or an  
24 LLP to carry out the military housing efforts, but  
25 they -- this was, first, an entirely commercial

## PROCEEDINGS

1 endeavor. What happened here was the military  
2 wanted to switch from a public financing model to a  
3 private financing model.

4 They wanted to outsource that to a private  
5 real estate developer. They ran a competition.  
6 They selected a developer. The developers wanted  
7 the lucrative government contracts and the fees that  
8 go along with it, so they weren't completely  
9 aligned.

10 I think that is exemplified by the fact  
11 that, as Your Honor just mentioned, the developers  
12 aren't plaintiffs in this case. The military has  
13 resisted discovery. They, you know -- we just found  
14 out, didn't even put in a litigation hold in this  
15 case. So they really are being treated separately  
16 for purposes of this case.

17 But then more to the point, they set up  
18 these joint-venture entities essentially so that  
19 they could get the loan financing and distribute it  
20 for these projects. That's why the operating  
21 agreements were often signed at the same time as the  
22 financial close. And so once they set up these  
23 entities, then they move forward. And the fact that  
24 they had a shared interest in the structures being  
25 legally compliant or in the projects doing well does

## PROCEEDINGS

1 not create the common legal interest under the law.

2 Plaintiffs represented that they have  
3 identified as narrow categories. That's just not  
4 true at all. They've identified some -- well, I  
5 think, three or four specific categories pre  
6 formation. And I'd be happy to talk through  
7 those --

8 THE COURT: Sure.

9 MS. KIRSHNER: -- and why those are  
10 insufficient.

11 So the first one is not narrow. It is how  
12 to properly structure the project. That -- the  
13 structuring of an entity is essentially a commercial  
14 endeavor, and the case law finds -- or holds that a  
15 collaborative effort to structure a deal or a  
16 transaction that is essentially commercial in  
17 nature, even if it has, you know, some legal  
18 concerns or legal components, it's not a common  
19 legal interest within the meaning of that exception.

20 So that's the first one that they cite.  
21 And, again, it's ambiguous. The point is they  
22 wanted to ensure that the structure was easily  
23 compliant. The SEC case tells us that, you know, a  
24 want to comply with regulations, with statutes, is  
25 insufficient to establish a common legal interest.

## PROCEEDINGS

1                   So the next one they cite is purchase  
2 options in the TDMP. That is a new one that they've  
3 raised in their December 6th letter. Similar to the  
4 other ones. It's unclear exactly what they're  
5 talking about here, but the common legal interest is  
6 there. There's not been any evidence provided that  
7 that would establish a common legal interest. The  
8 TDMPs were documents authored by the developers,  
9 approved by the Army and Congress. They essentially  
10 laid out the whole plan for a given Army project.

11                   And all we can assume is that, perhaps,  
12 they've added that now because one of the exemplars  
13 on the privilege log mentioned purchase options. I  
14 believe it's Number 1317921. But our review of  
15 their entire log suggests that's the only one that  
16 mentions purchase options.

17                   So, you know, another component of the  
18 common-interest exception is that the disclosures  
19 were made in furtherance of the common legal  
20 strategy. So, you know, we don't know if this just  
21 applies to that one or if there are other documents  
22 that they are withholding on it. Anyway, that's the  
23 second one.

24                   The third one would be tax implications of  
25 the project structures. Similar to the other two,

## PROCEEDINGS

1 it's not exactly clear what the common legal  
2 interest is there. If the developer wanted to  
3 ensure the partnerships were compliant with tax law,  
4 that's, again, compliant -- regular compliance with  
5 law and regulations is not a common legal interest.

6 If they wanted to structure -- they wanted  
7 to set up a tax structure to get favorable tax  
8 treatment, that's a business decision. And there's  
9 no evidence, nothing's been provided suggesting that  
10 there was, for example, an imminent concern with an  
11 audit, and so they were handling tax issues in  
12 connection with that.

13 So those are the only three pre-formation  
14 legal interests that have specifically been  
15 identified. And I can run through the  
16 post-formation ones as well.

17 THE COURT: Please do.

18 MS. KIRSHNER: Okay. So the first one --  
19 now, this really goes back to plaintiffs' counsel's  
20 comment with -- that they're narrow. They've put  
21 "shared legal strategies for protecting the  
22 projects' ongoing legal interests."

23 So that would apply to any joint venture.  
24 It's incredibly broad. There's no specific legal  
25 interest identified. So, you know, we can't really

## PROCEEDINGS

1 say a lot more than that because we don't know what  
2 the specific narrow legal interests are. But if you  
3 look at, you know, even the out-of-circuit case law  
4 that plaintiffs cite about joint ventures, it's a  
5 very specific approach to the common-interest  
6 exception. The courts are going through document by  
7 document at some -- in some respects and really  
8 identifying each common legal interest. Just  
9 asserting a blanket interest over any legal interest  
10 that these projects might have is just -- it would  
11 essentially eviscerate the -- what has been referred  
12 to as "narrow exception."

13 So aside from that, the final one would be  
14 the implications regarding AMBAC's credit downgrade  
15 in 2008. So that, as we explained in our letters,  
16 was primarily a business discussion. What happened  
17 there was in 2008 the financial crisis, AMBAC's  
18 credit was downgraded. That was, you know, not  
19 viewed as positive for the projects. AMBAC, at that  
20 point, had consent rights over all the projects, so  
21 they were looking into refinancing. AMBAC had to  
22 provide consent for that. They were essentially  
23 trying to figure out how to remove AMBAC from their  
24 projects at that point.

25 That was a business strategy. The fact

## PROCEEDINGS

1 that it included the other stakeholders, it also  
2 included third-party advisors, like Barclays, in the  
3 decision to figure out a business strategy of how to  
4 get AMBAC off their deals.

5 The fact that it might have also had some  
6 legal components where there were legal concerns  
7 that there could be litigation potentially stemming  
8 from such a strategy is not sufficient. The case  
9 law says that a business strategy that has some  
10 legal concerns is not sufficient to create a common  
11 legal interest.

12 And, in fact, to our knowledge, there --  
13 and, well, at least we noted in our first letter  
14 that there have been no actual litigations that were  
15 cited stem from this, and there weren't -- not any  
16 identified in plaintiffs' opposition as well.

17 So to our knowledge, those discussions and  
18 those potential legal concerns did not go anywhere.  
19 And so, anyway, that is the final, kind of,  
20 post-formation legal interest.

21 THE COURT: Okay.

22 MS. KIRSHNER: So those, I count five  
23 specific -- well, I won't call them specific --

24 THE COURT: Yeah.

25 MS. KIRSHNER: Those are the legal

## PROCEEDINGS

1           interests that are identified here.

2           THE COURT: Okay. Thank you.

3           Ms. Tabaksblat, do you want to respond to  
4           any of that?

5           MS. TABAKSBLAT: Your Honor, so I'll just  
6           respond briefly, which is to say that we'll start  
7           with AMBAC because that's the last one that we just  
8           touched on. And, obviously, Your Honor has had the  
9           benefit of reviewing the exemplars, but both some of  
10           the exemplars, as well as additional documents  
11           withheld on the log relate to the discussions about  
12           this 2008 downgrade and specifically the legal  
13           implications that may come of it.

14           The fact that there was no litigation that  
15           was commenced in 2008 doesn't preclude the assertion  
16           of the common-interest privilege, as the case law is  
17           clear, and I think we cite a number of cases in our  
18           brief that talk about you don't have to actually  
19           have a pending litigation to assert the privilege.

20           And as Your Honor is well aware, there  
21           ultimately was a litigation that came out of it. So  
22           the consideration of potential legal implications  
23           was well founded here.

24           With respect to the additional categories  
25           that counsel just went through, again, the cases

## PROCEEDINGS

1 that the defendants rely on -- and we address those  
2 in Footnote 10 of our letter -- they're dealing with  
3 arm's-length entities, parties -- joint parties to  
4 an insurance agreement, an advertising company  
5 providing consulting to an entity. They're not  
6 dealing with joint owners of a company.

7 And here, yes, there is a commercial  
8 interest. Every business has a commercial interest,  
9 which is to make money. We disagree. And I don't  
10 think the record supports the assertion that this  
11 was a handoff from the military to the developer.

12 In fact, it's been very clear at  
13 depositions that the Army had to approve of the  
14 lender that was selected. And both JLL and the  
15 military branch went through an extensive process.

16 And so these were very much joint owners of  
17 projects. Not everything that they did was legal in  
18 nature, and that is consistent with the fact that we  
19 produced a lot of documents. But there were certain  
20 instances here where there were objectives and there  
21 were issues that needed to be addressed that did  
22 implicate legal issues, and those were the issues  
23 that we asserted the common-interest privilege.

24 And we do think that there is support for  
25 that in the case law. I'll direct the Court to the

## PROCEEDINGS

1       In Re: Vella Holding, (phonetic) which we cite in  
2       our brief at Footnote 9. The defendants don't  
3       address that. And I think that that -- the  
4       relationship there is much more analogous to the  
5       ones that the defendants cite in their case.

6           Unless Your Honor has any further questions  
7       with respect to the relationship between the  
8       developers and the military branches, I would  
9       want -- I do want to address one more point --

10           THE COURT: Okay.

11           MS. TABAKSBLAT: -- which is the Malvern  
12       point, if that's okay.

13           THE COURT: Okay.

14           MS. TABAKSBLAT: So it seems like there has  
15       been some confusion with respect to the relationship  
16       between Malvern, and I'm hoping I can provide some  
17       clarity with respect to that.

18           Mr. Repetto, who is the principal of  
19       Malvern -- and, again, I don't represent Malvern,  
20       and I have not been in any way involved in the  
21       response to the document subpoena. But Mr. Repetto,  
22       who's the principal of Malvern, was formerly, as  
23       counsel indicated, an executive vice president of  
24       BBC. And in his personal capacity as an employee of  
25       BBC, which, at that time, was GMH, he was involved

## PROCEEDINGS

1 in the debt selection process with respect to  
2 certain of the earlier BBC projects.

3 After he left BBC, Mr. Repetto formed his  
4 own company, Malvern, and he served two roles. One  
5 was an informal role in his personal capacity, which  
6 was, if there was a question with respect to work  
7 that he previously did, because he had a  
8 relationship, on a one-off instance, he would get a  
9 phone call or an e-mail, Hey, do you remember this?  
10 And there's evidence in the record that there's -- I  
11 can't give you an exact number, but approximately  
12 five, a handful, less than ten communications of  
13 that nature. That's not in any capacity other than  
14 that as a -- of a former employee.

15 THE COURT: Are any of the exemplars an  
16 example?

17 MS. TABAKSBLAT: No, because I don't  
18 believe there's an assertion of privilege over that,  
19 but I -- I'm just trying to explain to the Court the  
20 relationship.

21 THE COURT: Okay.

22 MS. TABAKSBLAT: With respect to the --  
23 with respect to Malvern, Malvern was formally  
24 retained, and I believe the engagement letter was  
25 produced as an advisor to Air Force projects that

## PROCEEDINGS

1 are not parties to this case. So they are military  
2 housing projects, but they are not plaintiffs in  
3 this case. They are Navy projects. And so Malvern  
4 performed an advisory role to those nonparties, but  
5 not in connection with any -- in any of the projects  
6 that are plaintiffs'.

7 THE COURT: Okay. So there wouldn't be any  
8 privilege over those, right?

9 MS. TABAKSBLAT: Well, those, again, are  
10 the same joint defense, and so it's not a privilege  
11 that's being asserted by a party to this case. But  
12 because the Court -- because we did produce  
13 documents for nonparties, the same privilege that  
14 would apply between the military branch and the  
15 developer and the financial advisor, would apply in  
16 that case, even though that party is not. It's  
17 between the same -- it is between the same joint  
18 owners. And it is -- even though it's not, it is  
19 still an assertion of privilege between those same  
20 parties; they're just not projects in the case.

21 THE COURT: Okay, but it's not your  
22 client's privilege to assert.

23 MS. TABAKSBLAT: Well, it's the developers  
24 and the military bases.

25 THE COURT: Yeah. But, again, the

## PROCEEDINGS

1       developers are not here and the military is not  
2       here. I mean, they were, but they left. But, you  
3       know, they're not coming in and saying, That's our  
4       privilege.

5                    MS. TABAKSBLAT: Well -- so, Your Honor, I  
6       guess the -- I guess what the crux of the issue here  
7       is that these are productions that were made  
8       exclusively by the projects. The way the  
9       productions were made here is by the developers.  
10       So, in theory, these are assertions by the  
11      developers in connection with a production that the  
12      developer is making. And so it is -- that's the  
13      assertion of privilege that we're asserting here.

14                   THE COURT: Okay. That -- all right.

15       Okay. Thank you.

16                   Anything anybody else -- any of the other  
17      defendants want to say about privilege?

18                   MR. JONES: Just a couple of points to  
19      follow on what counsel might have said. First of  
20      all, to underscore something that I think the Court  
21      has already hinted at, there are dozens of third  
22      parties on plaintiffs' privilege log. There's some  
23      that they haven't even mentioned in their briefing.  
24      There's MetLife. There's Core Impact. For all of  
25      these entities, plaintiffs have made no argument

## PROCEEDINGS

1       whatsoever as to how they qualify for an exception  
2       to waiver. The Court can reject those exceptions  
3       out of hand as to those entities.

4               The other point that I would like to make  
5       is Malvern, it doesn't seem like he was performing  
6       any job for plaintiffs, let alone having primary  
7       responsibility for a key corporate job. So I think  
8       it's clear that he doesn't qualify for the  
9       functional-equivalent exception.

10              Thank you, Your Honor.

11              THE COURT: Okay. Thank you.

12              MS. KIRSHNER: And, Your Honor?

13              THE COURT: Yeah.

14              MS. KIRSHNER: If I may --

15              THE COURT: Sure.

16              MS. KIRSHNER: -- respond.

17               So it's not true that the case law supports  
18       that there is a blanket assertion of common  
19       interest, legal interest, once there's joint owners  
20       or a joint venture. You know, indeed, the In Re:  
21       Vella case that was mentioned, in that case, the  
22       common interest was triggered by two different  
23       events. It wasn't just the (inaudible) formation --  
24       (inaudible) joint venture.

25               And so, anyway, it is just -- this is an

## PROCEEDINGS

1       incredibly broad assertion of the exception, and I  
2       just respectfully direct Your Honor to the first  
3       couple pages of (inaudible) letter, and I think it  
4       is laid out there well, and I then I won't take  
5       up --

6               THE COURT: Okay. I appreciate that.

7               MS. KIRSHNER: -- any more time.

8               THE COURT: Trust me, I've read it multiple  
9       times, so -- okay.

10              So on the privilege then I need to get an  
11       answer from the plaintiffs about confirming  
12       Mr. Rabin, Mr. Vaughn and what Core Impact is.

13              MS. TABAKSBLAT: Your Honor, with respect  
14       to Mr. Rabin, Mr. Vaughn, those are both BBC  
15       employees. With respect to Core Impact, we can  
16       advise -- we can send a letter to the Court.

17              THE COURT: Okay.

18              MS. TABAKSBLAT: (Inaudible.)

19              THE COURT: Okay. That would be great.

20       All right.

21              Then in terms of other deadlines, the  
22       spreadsheet from the plaintiffs with the interest  
23       rates, how long do we need to get that together?

24              MS. TABAKSBLAT: Your Honor, it's going to  
25       involve getting documents from multiple different

## PROCEEDINGS

1 places.

2 THE COURT: Okay.

3 MS. TABAKSBLAT: Perhaps we could have  
4 until the -- I guess the end of next week is a  
5 holiday.

6 THE COURT: Yes.

7 MS. TABAKSBLAT: So perhaps the end of the  
8 first week in January.

9 THE COURT: Hold on one second. I think  
10 it's the 7th, but let me see.

11 The 6th; is that good?

12 MS. TABAKSBLAT: I think that should be  
13 okay. And if we have --

14 THE COURT: Okay.

15 MS. TABAKSBLAT: -- an issue, I'll let the  
16 Court know.

17 THE COURT: Okay. That's fine. Okay.

18 And then we said -- so then the next thing  
19 I have for you, Ms. Tabaksblat, is on the private  
20 litigation, seeing if there are any summary  
21 documents. And how long is it going to take you to  
22 find that out?

23 MS. TABAKSBLAT: So, Your Honor, that  
24 should be quicker, with the exception that I do not  
25 know what people's vacation --

## PROCEEDINGS

1                   THE COURT: Right.

2                   MS. TABAKSBLAT: -- and holiday schedules  
3 are.

4                   THE COURT: Okay.

5                   MS. TABAKSBLAT: So if --

6                   THE COURT: How about we do this: How  
7 about you -- it's more important to me that you let  
8 Mr. Baldoni know what's going on with that. And  
9 if -- when you send me your letter on the 6th, if  
10 you can, just update me on what the status is.  
11 Okay?

12                  MS. TABAKSBLAT: Okay.

13                  THE COURT: But, obviously, if you have the  
14 information, share it with them sooner. Okay.

15                  The damages issue raised by AMBAC was  
16 denied without prejudice. Malvern, I gave you  
17 instructions about, you know, meeting and conferring  
18 with them about their -- the subpoena to them. And  
19 then I think that's it for deadlines, unless I'm  
20 missing something, right? Okay.

21                  MR. JONES: Did you mention the military's  
22 letter?

23                  THE COURT: I did -- I talked about that  
24 with Mr. Bannon before he left, so I didn't bring  
25 that up again. But I'm going to get a letter from

## PROCEEDINGS

1 him by the end of this week, I think.

2 So the last issue then substantively is the  
3 motion for reconsideration.

4 So, Ms. Tabaksblat, that's your motion, so  
5 is there anything else you want to say?

6 MS. TABAKSBLAT: Your Honor, we -- you  
7 know, we obviously -- we respect the Court's ruling,  
8 and this was new information that came out  
9 subsequent to the Court's ruling. So after we  
10 received the Court's decision, we deposed  
11 Mr. Eveland. And, you know, quite simply, Your  
12 Honor, we just -- we presented the Court with the  
13 testimony from Mr. Eveland, which we think -- which  
14 we think suggests that to the extent that the Court  
15 determined that the documents weren't relevant  
16 because the RMBS consent judgment related to  
17 treating and this case relates to the financing of  
18 complex transactions, Mr. Eveland, I think,  
19 highlights two points.

20 One is that the underlying nature of the  
21 fraud was the same, which is that, in this case, the  
22 way in which the -- we are alleging that the  
23 fraudulent financing was executed was by preselling  
24 the bonds, and that involved a differential between  
25 the pricing that the projects were getting and the

## PROCEEDINGS

1 pricing that the public was getting. And so there  
2 was the same differential in the pricing of bonds in  
3 both cases.

4 The other thing that was highlighted  
5 through that testimony was that it involved the same  
6 groups and the same individuals, and so we -- you  
7 know, we pointed the Court to a very, very specific,  
8 discrete portion of Mr. Eveland's testimony. And  
9 respectfully, Your Honor, we believe that's new  
10 information that we weren't able to present to the  
11 Court in our prior motion, but it does go directly  
12 to the Court's ruling.

13 THE COURT: Okay. Thank you.

14 Mr. Balber?

15 MR. BALBER: Well, Your Honor, I feel like  
16 I'm arguing this point for the third time because I  
17 am -- oh, fourth.

18 THE COURT: Four.

19 MR. BALBER: Thank you, Your Honor.

20 Not sure what else to say other than  
21 there's nothing in Mr. Eveland's testimony that  
22 changes the dynamic. He absolutely did not testify  
23 that the nature of the fraud is the same. He said  
24 precisely the opposite. We've all known since the  
25 NPA was submitted in 2014 and plaintiffs referenced

PROCEEDINGS

1 in the complaint that the -- both groups, the  
2 Military Housing Group and the RMBS Trading Group  
3 were under the same rubric with the same two people  
4 at the top. There's no news there. No reason to  
5 revisit this, Your Honor. Happy to address any  
6 questions you have, but same old story for the  
7 fourth time.

8 THE COURT: Okay. Thank you.

9 Anything further, Ms. Tabaksblat?

10 Okay. I'm going to deny the motion, but  
11 I'll get a written ruling out to you. I promise I  
12 will this time, unlike last time, so...

13 Okay. Anything else anybody wants to raise  
14 today that I missed?

15 Okay. Hearing nothing.

16 All right. So you -- it sounds like you  
17 have a lot of depositions coming up. I guess the  
18 only thing we didn't talk about is the 30(b)(6)  
19 topics for Jefferies. You guys are going to meet  
20 and confer on that. Do you -- do we -- do you want  
21 to just let me know if you can't work anything out,  
22 or --

23 MR. BALBER: I would suggest that  
24 plaintiffs give us another iteration of their  
25 request. Happy to talk any time, but I feel like

PROCEEDINGS

1 we've been doing a lot of talking and not making a  
2 lot of progress.

3 THE COURT: All right. Well, how about I  
4 give you until the 6th, one -- January 6th, one last  
5 try. And then if you can't -- you don't -- if you  
6 want to submit the topics to me at that -- the  
7 topics that are in dispute, I guess.

8 Actually, strike that. Give me the whole  
9 list of everything that's been agreed, and then mark  
10 what's been -- what's in disagreement.

11 And if you -- Mr. Balber, if you have a  
12 competing proposal for that topic, you know, or how  
13 you would reword it, the -- you know, that's fine.  
14 I don't know that I need to hear more argument on  
15 this, but just whatever is in dispute and what the  
16 parties' competing proposals are. Fair enough?

17 Okay.

18 MS. TABAKSBLAT: That works for us, Your  
19 Honor.

20 THE COURT: Okay. So can we aim for  
21 January 6th? You can let me know that as well?

22 MR. BALBER: That's fine, Judge. Thank  
23 you.

24 THE COURT: Okay. Do we have any 30(b)6s?  
25 Are there any Jefferies 30(b)6s that are supposed to

PROCEEDINGS

1 take place before then?

2 MR. BALBER: It has not been scheduled yet.

3 No.

4 THE COURT: Okay. So that's enough time  
5 then for you to work it out. Okay.

6 All right. Did I forget anything? Okay.  
7 Very good.

8 All right. Well, thank you all for coming  
9 in today. Have a nice holiday. And I'm sure I will  
10 be speaking to you in the new year. Thank you.

11 MR. JONES: Thank you.

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PROCEEDINGS

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2  
3 C E R T I F I C A T E  
4

5 I, Adrienne M. Mignano, certify that the  
6 foregoing transcript of proceedings in the case of  
7 Monterey Bay Military Housing, LLC, et al. v. AMBAC  
8 Assurance Corp. et al., Docket #19-cv-9193, was  
9 prepared using digital transcription software and is  
10 a true and accurate record of the proceedings.

11  
12 Signature Adrienne M. Mignano  
13

14 ADRIENNE M. MIGNANO  
15

16 Date: December 21, 2022  
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